



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

TUESDAY, 26 MAY 2009

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS**LEGISLATION COMMITTEE****Tuesday, 26 May 2009**

Members: Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), Senators Feeney, Fisher, Ludlam and Marshall

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Farrell, Ferguson, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

Senators in attendance: Senators Barnett, Bishop, Brandis, Collins, Crossin, Fielding, Fierravanti-Wells, Fisher, Hutchins, Ludlam, Marshall, Moore, Parry, Trood and Xenophon

Committee met at 9.01 am

ATTORNEY-GENERAL'S PORTFOLIO**In Attendance**

Senator, the Hon. Joe Ludwig, Minister for Human Services

Attorney-General's Department**Management and Accountability**

Mr Roger Wilkins AO, Secretary

Ms Renee Leon, Deputy Secretary, Strategic Policy and Coordination Group

Mr Miles Jordana, Deputy Secretary, National Security and Criminal Justice Group

Mr Ian Govey, Deputy Secretary, Civil Justice and Legal Services Group

Outcome 1—An equitable and accessible system of federal civil justice**Program 1.1 Access to Justice and Social Inclusion****Sub Program 1.1.1 Access to Justice**

Ms Alison Playford, Assistant Secretary, Federal Courts Branch

Ms Toni Pirani, Assistant Secretary, Family Pathways Branch

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch

Ms Cathy Rainsford, Acting Assistant Secretary, Family Law Branch

Ms Sandra Power, Special Adviser, Federal Courts Branch

Ms Catherine Fitch, Acting Assistant Secretary, Administrative Law and Civil Procedure Branch

Ms Vicki Parker, Assistant Secretary, Intercountry Adoption Branch

Mr Matt Minogue, Assistant Secretary, Access to Justice Taskforce

Sub Program 1.1.2 Social Inclusion

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division

Dr John Boersig PSM, Assistant Secretary, Human Rights Branch
Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch
Ms Joan Jardine, Acting Assistant Secretary, Indigenous and Community Legal Services Branch
Mr Kym Duggan PSM, Assistant Secretary, Indigenous Policy and Service Delivery Branch
Mr Jeffrey Murphy, Acting Assistant Secretary, Claims and Legislation Branch, Native Title Unit
Ms Amy Elleway, Acting Assistant Secretary, Future Acts and System Coordination Branch, Native Title Unit

Program 1.2—Legal Services

Sub Program 1.2.1 Civil Law

Dr James Pople, First Assistant Secretary, Civil Law Division
Ms Janette Davis, Assistant Secretary, Office of Legal Services Coordination
Mr David Bergman, Assistant Secretary, Bankruptcy Policy Branch
Mr Richard Glenn, Assistant Secretary, Personal Property Securities Branch

Sub Program 1.2.2 Classification and Copyright

Ms Philippa Lynch, First Assistant Secretary, Territories and Information Law Division
Ms Jane Fitzgerald, Assistant Secretary, Classification Operations Branch
Ms Amanda Davies, Assistant Secretary Copyright and Classification Policy Branch
Mr Peter Treyde, Acting Assistant Secretary Copyright and Classification Policy Branch

Sub Program 1.2.3 Legislative Drafting and Publishing

Mr James Graham, First Assistant Secretary, Office of Legislative Drafting and Publishing

Sub Program 1.2.4 International Law

Mr Bill Campbell QC, First Assistant Secretary, Office of International Law
Mr Stephen Bouwhuis, Assistant Secretary, International Law and Trade Branch
Mr Geoff Skillen, Acting Assistant Secretary, International Security and Human Rights Branch

Sub Program 1.2.5 Constitutional Policy and Law Reform

Mr Iain Anderson, First Assistant Secretary, Priorities and Coordination Division
Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Outcome 2—Coordinated federal criminal justice, security and emergency management activity, for a safer Australia

Program 2—National Security

Sub Program 2.1.1 National Security Resilience Policy

Mr Mike Rothery, Acting First Assistant Secretary, National Security Resilience Policy Division
Mr Michael Jerks, Assistant Secretary, Critical Infrastructure Protection Branch
Mr Alex Webling, Acting Assistant Secretary, Chemical Security Branch
Mr David Prestipino, Acting Assistant Secretary, Emergency Management and Protective Security Branch
Ms Sheridan Evans, Assistant Secretary, Identity Security Branch
Ms Marcella Hawkes, Acting Assistant Secretary, E-Security Policy & Coordination Branch

Sub Program 2.1.2 Emergency Management

Mr Tony Pearce, Director General, Emergency Management Australia

Mr Mike Rothery, Acting First Assistant Secretary, National Security Resilience Policy Division

Ms Diana Williams, Assistant Secretary, Protective Security Coordination Branch

Mr Mark Sullivan, Acting Assistant Secretary, Crisis Support Branch

Mr David Prestipino, Acting Assistant Secretary, Emergency Management and Protective Security Branch

Mr Kevin Rheese, Director, Relief and Recovery Section

Sub Program 2.1.3 National Security Capability Development

Mr Martin Studdert, First Assistant Secretary, National Security Capability Development Division

Mr Mike Norris, Assistant Secretary, Counter-Terrorism Capability Development Branch

Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch

Sub Program 2.1.4 National Security Law and Policy

Mr Geoff McDonald PSM, First Assistant Secretary, National Security Law and Policy Division

Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

Ms Belinda Moss, Assistant Secretary, National Security Policy Branch

Ms Annette Willing, Assistant Secretary, Security Law Branch

Dr Karl Alderson, Assistant Secretary, AusCheck Branch

Program 2.2—Criminal Justice**Sub Program 2.2.1 Criminal Justice**

Ms Elizabeth Kelly, First Assistant Secretary, Criminal Justice Division

Dr Dianne Heriot, Assistant Secretary, Border Management and Crime Prevention Branch

Ms Sarah Chidgey, Assistant Secretary, Criminal Law Branch

Mrs Frances Brown, Assistant Secretary, Law Enforcement Branch

Mr Craig Harris, Assistant Secretary, Organised Crime Task Force

Sub Program 2.2.2 International Crime Cooperation

Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division

Ms Belinda Barry, Assistant Secretary, Mutual Assistance and Extradition Branch

Mr Steven Marshall, Assistant Secretary, International Assistance and Treaties Branch

Outcome 3—Assisting regions to manage their own futures**Program 3.1—Services to Territories**

Ms Philippa Lynch, First Assistant Secretary, Territories and Information Law Division

Mr Julian Yates, Assistant Secretary, Territories West Branch

Mr Andrew Henderson, Assistant Secretary, Territories East Branch

Strategic Policy and Coordination Group**Priorities and Coordination Division**

Mr Iain Anderson, First Assistant Secretary, Priorities and Coordination Division

Mr David Finlayson, Assistant Secretary, Public Affairs Branch

Mr Matt Hall, Assistant Secretary, Cabinet and Ministerial Coordination Branch

People, Information and Technology Division

Ms Sue Chapman, General Manager, People, Information and Technology Division

Ms Michele Kane, Assistant Secretary, Human Rights and Governance Branch

Finance and Property Division

Mr Stephen Lutze, General Manager, Finance & Property Division

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner

Mr Peter Bache, Acting Executive Director

Mr Nicholas Sellars, Acting Director, Policy and Research

Mr Brett Adam, Director, Corporate Services

Australian Crime Commission

Mr John Lawler APM, Chief Executive Officer

Ms Jane Bailey, Executive Director, Organisational Services

Australian Customs and Border Protection Service

Mr Michael Carmody, Chief Executive Officer

Ms Marion Grant, Deputy Chief Executive Officer

Ms Linda Smith, Deputy Chief Executive Officer

Mr Neil Mann, Deputy Chief Executive Officer

Mr Steven Groves, Chief Financial Officer

Ms Jaclyne Fisher, National Director, Cargo

Ms Jan Dorrington, National Director, Passengers

Ms Sue Pitman National Director, Trade

Rear Admiral Allan Du Toit, Commander, Border Protection Command

Ms Roxanne Kelley, National Director, Enforcement and Investigations

Mr Nigel Perry, National Director, Maritime Operations Support

Mr Jeff Buckpitt, National Director, Intelligence and Targeting

Dr Ben Evans, National Director, Law Enforcement Strategy

Australian Federal Police

Mr Mick Keelty APM, Commissioner

Mr Tony Negus APM, Deputy Commissioner, Operations

Mr Andrew Colvin APM, performing the duties of Deputy Commissioner, National Security

Mr Andrew Wood, Chief Operating Officer

Australian Government Solicitor

Ms Rayne de Gruchy AM PSM, Chief Executive Officer

Mr David Riggs, Chief Financial Officer

Australian Human Rights Commission

The Hon Catherine Branson QC, President

Mr Graeme Innes AM, Human Rights Commissioner and Disability Discrimination Commissioner

Ms Elizabeth Broderick, Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination

Ms Susan Roberts, Executive Director

Mr David Richards, Manager, Finance and Services

Australian Institute of Criminology and Criminology Research Council

Mr Tony Marks, Acting Director

Dr Judy Putt, General Manager, Research Services

Mr Brian Russell, Senior Financial Officer

Australian Law Reform Commission

Emeritus Professor David Weisbrot AM, President

Ms Sabina Wynn, Executive Director

Australian Security Intelligence Organisation

Mr David Irvine AO, Director-General of Security

Australian Transaction Reports and Analysis Centre

Mr Thomas Story, Acting Chief Executive Officer

Ms Jane Elizabeth Atkins, Acting Executive General Manager

Mr Alf Mazzitelli, General Manager, Corporate and Chief Finance Officer

Classification Board

Mr Donald McDonald, Director

Classification Review Board

The Hon Trevor Griffin, Deputy Convenor

CrimTrac Agency

Mr Jeff Storer, Acting Chief Executive Officer

Ms Nicole McLay, Chief Finance Officer

Family Court of Australia

Mr Richard Foster PSM, Chief Executive Officer

Mr Grahame Harriott, Executive Director, Corporate Services

Ms Angela Filippello, Principal Registrar

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive

Mr Philip Kellow, Deputy Registrar

Mr Peter Bowen, Chief Finance Officer

Federal Magistrates Court of Australia

Mr Richard Foster PSM, Acting Chief Executive Officer

Mr Steve Agnew, Acting Deputy Chief Executive Officer

Mr Grahame Harriott, Acting Chief Finance Officer

High Court of Australia

Mr Andrew Phelan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Jeff Smart, Manager, Corporate Services

Insolvency and Trustee Service Australia

Ms Veronique Ingram, Chief Executive and Inspector General in Bankruptcy

Mr Peter Lowe, Executive Director

Mr Bob Morison, Chief Finance Officer

National Native Title Tribunal

Ms Stephanie Fryer-Smith, Registrar

Mr Franklin Gaffney, Director, Corporate Services and Public Affairs

Mr Hugh Chevis, Director, Service Delivery

Mr Hardip Bhabra, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Christopher Craigie SC, Director of Public Prosecutions

Mr Graeme Davidson, Acting First Deputy Director

Ms Stela Walker, Deputy Director, Corporate Management

CHAIR (Senator Crossin)—I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2009-10 and related documents for the Attorney-General's and the Immigration and Citizenship portfolios. The committee must report to the Senate on 23 June 2009 and it has set 13 July 2009 as the date by which answers to questions on notice are to be returned. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the roles of the Senate governing estimates hearings, but we have a copy of those for anyone who might be here for the first time if you need them. I draw your attention to an order of the Senate from 13 May specifying the process by which a claim of public interest immunity should be raised.

The document read as follows—

Order of the Senate—Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(Agreed to 13 May 2009.)

(Extract, Journals of the Senate, 13 May 2009, p.1941)

[9.03 am]

Australian Federal Police

CHAIR—The committee are looking into the estimates of the Attorney-General's portfolio and have agreed that we will begin proceedings today with the Australian Federal Police. I welcome Minister the Hon. Joe Ludwig, representing the Attorney-General and the Minister for Home Affairs. I particularly welcome officers from the Australian Federal Police, especially Commissioner Keelty. I understand that this will be your last Senate estimates, Commissioner. I am not sure if that is a good thing or a bad thing. You probably think it is quite a relief, I suspect. On behalf of the committee, I want to acknowledge your contribution and your cooperation with the Senate Standing Committee on Legal and Constitutional Affairs, certainly over the time that I have been deputy chair and chair of the committee. I am sure we will have more to say about that towards the end of the proceedings. To begin this morning, do you have an opening statement?

Mr Keelty—No, I do not. Thank you for your comments. If I can, at the end I will make a brief statement.

CHAIR—Yes, I understand. We will facilitate that.

Senator BARNETT—I would like to associate myself with the remarks of the chair in thanking you, Commissioner Keelty, for your service to our country and to the AFP specifically, and for the manner in which you have cooperated with this particular committee during budget estimates over many years. I want to put that on the record and say thank you.

Mr Keelty—Thank you.

Senator BARNETT—I have done that privately; I wanted to do that publicly. Now for questions. To kick it off, could we get a response on the security fee blow-out—the \$1.6 million increase for the Australian Federal Police who provide perimeter protection for Parliament House in Canberra? Can we have further and better particulars regarding that matter?

Mr Colvin—I may be able to assist you with that. The AFP provides parliamentary security services on a commercial basis, which includes the recovery of the competitive neutrality. It is a pure cost recovery model and we are currently in negotiation with the department about what the final costs for next year will be. As part of that negotiation we will include potential efficiencies that can be delivered in terms of numbers of staff required to provide that service. It would be too early at this stage to commit to how that new model may look, if in fact it is a new model. But the costs associated with the increase of 15 per cent—which, as I say, is still subject to negotiation—really relate to increased unit costs for the AFP as well as the competitive neutrality costs that we are forced to pass on.

Senator BARNETT—A 15 per cent increase in this day and age is a large increase in anybody's book. A \$1.6 million increase sounds like a large increase. One could only assume that further and additional services are being required, but can you assist us in that regard? How many members of the force are involved, what services do they provide and why is the increase so significant?

Mr Colvin—We have in the order of 88 members that provide perimeter security for Parliament House. The cost increase is not in relation to increased services in the sense of further staff; it is in relation to the cost pressure increases for those staff. That includes such things as pay rises, increments, changes to the way that superannuation contributions are measured and, as I said, the cost neutrality percentage, which I think is around six per cent per year.

Senator BARNETT—That does not seem to add up to 15 per cent. So there is no extra increase in staff, you are saying? The 88 are remaining. The services will remain the same. It is simply a 15 per cent increase?

Mr Colvin—That is correct, yes, and that increase is negotiated every year. This is not the first time. Every year our cost price per unit increases according to our pay rises, our increment rises—

Senator BARNETT—What was last year's increase?

Mr Colvin—I believe it was in the order of eight or nine per cent, but I would have to check that and get back to you.

Senator BARNETT—Why would this year's be double that? Inflation has gone down. It is hard to imagine why there would be a doubling of the increase of last year.

Mr Colvin—There are a range of things. Some relate to our collective agreement. Every year pay rises for our members are set, but also—

Senator BARNETT—What pay rises are flowing through to your members?

Mr Colvin—Every year there is a four per cent pay rise which flows through to our members. That is part of our collective agreement. But the reason the costs vary from year to year relates to the way superannuation, for instance, is treated, which relates to legislation and legislative changes.

Senator BARNETT—What order of increase is that?

Mr Colvin—I would not want to give you an exact figure. It is in the order of four or five per cent.

Senator BARNETT—It does not quite add up to 15, does it? You still have 88 people there.

Mr Colvin—At this stage, the 15 per cent is not a figure that we have formally given to the department, which is why I am just being a little bit careful about what the final negotiated figure will be.

Senator BARNETT—I have not seen the *Hansard* of yesterday, but the report was that there was an increase of more than \$1.6 million, and this is a report by the Secretary of the Department of Parliamentary Services, Alan Thompson, to the parliament yesterday.

Mr Colvin—I have seen that, and I realise that is the figure he has quoted. At this stage, though, we are still in negotiation with the department about that figure. I should add, as well, that there is a long service contribution which is about a five per cent increase which forms part of that 15 per cent or so total.

Senator BARNETT—Is it possible that you are just good negotiators getting a good return on your funds invested?

Mr Colvin—It is still under negotiation. It is a cost recovery model. We recover the cost of the service. It is not a profit model. We are not looking to negotiate above and beyond what it costs us to deliver that service.

Senator BARNETT—Does the Department of Parliamentary Services have an option of outsourcing that to another security entity rather than the Australia Federal Police or is this a matter for the Australian Federal Police alone?

Mr Colvin—I think that is the cost neutrality issue. No, they do not. It is a requirement that the AFP Protective Service provides that service, which is why there is a cost neutrality negotiation with the department of finance. The short answer to your question is no, I do not believe they do.

Senator BARNETT—In other parts of the AFP you have suffered challenges to remain and hold the budget together. Perhaps you are making the most of your opportunity in this part of the operation so that you can help cover the stresses and strains as a result of government policy in other parts of the Australian Federal Police. Could that be part of the reason for this?

Mr Colvin—No. This is a straight transferral of the cost of the service to the purchaser of the service.

Senator BARNETT—It is open for others, perhaps, to speculate in terms of the reason the increase is so significant. Why don't we move to another matter. Yesterday we had evidence

from the Classification Board regarding the proliferation of pornography and filth through our corner stores, petrol stations, small shops, milk bars and that sort of thing, and that this is happening with regular occurrence around Australia. One of the reasons for this occurring was the fact that there is inadequate enforcement by the states and territories and, indeed, by police around the country. Indeed, there is a whole range of other reasons, notwithstanding that the Classification Board have refused classification to many of the materials, the pornographic and other offensive materials that are in existence in these corner stores, petrol stations and the like. I am wondering what the Australian Federal Police is doing to assist in combating what I have described as a systems failure, where young kids and adults can access this material when clearly it has been refused classification and should not be publicly available. I would like to get a response, if possible, from the perspective of the Australia Federal Police, knowing, also, that Bob Debus, the federal Minister for Home Affairs, has written a letter which he tabled yesterday to you, Mr Keelty, dated 4 February 2009. I have that letter before me. He says in that letter:

I am writing to seek your cooperation in addressing low levels of compliance by retailers and distributors with classification enforcement laws.

He says that he wants to give:

... an increased priority and adequate resources to the enforcement of classification offences and I seek your assistance in achieving this.

I was wondering if you can let us know how you have responded to that and the issue before us.

Mr Negus—The responsibility, really, for the enforcement of this rests with states and territories, as you have already articulated. When that letter was received from the minister it was certainly forwarded to our ACT command, who do have the responsibility, as a state or territory police force, to administer that. But really the AFP is not in a position to be enforcing those laws across Australia with regard to local milk bars or service stations.

Senator BARNETT—So what role does the AFP have, if any, in terms of combating this type of filth that is infiltrating the public arena in Australia?

Mr Negus—At the moment the bulk of our activity focuses on online activity, and we are certainly doing a lot of work in that area to ensure that children are protected and that child pornography particularly is pursued vigorously by the police. At present we do not have a role as far as regulating the sale of offensive material in places like milk bars and service stations.

Senator BARNETT—I will come to the online activities shortly. We were advised yesterday that the minister had received a response from you. Can you advise if that is correct, and can you provide a copy of that letter if possible? I am happy for you to take that on notice.

Mr Negus—I am sure we did respond and, from memory, I think that I actually authored that letter. We referred that to the ACT community policing area, which does have responsibilities in the ACT for enforcement. I also articulated in that letter that the AFP, on a federal level, do not have the resources or the capability to respond. As you would be aware, we are based in the major capital cities of Australia. We do not have a presence in regional or

rural Australia across the broad range of different areas where this may be available so it is not particularly practical for us to be involved in the broad enforcement of this type of crime.

Senator BARNETT—Sure, I understand that. We were advised yesterday—I stand to be corrected if it were otherwise—that WA, South Australia, Victoria, the AFP and the Northern Territory commissioners are the states that have responded to that letter which was written on 4 February. It is noted and appreciated that those states and entities obviously considered this with some priority, but it is now mid-May and, sadly, it would appear that the New South Wales, Queensland and Tasmanian police commissioners have not responded. I am aware that a copy of that letter went to the relevant police ministers as well. I consider that a great and grievous disappointment. This is a very serious matter—it is considered serious according to the minister. It was written on 4 February, and we still do not have a response from those states. No doubt that will be pursued in other areas.

What measures are you undertaking to combat offensive material online via gaming measures—internet and the like—at this time?

Mr Negus—As you are aware, we do have the high tech crime operations area in the AFP. They have been very active in a range of different crime types across the internet. In fact, I think I briefed this estimates committee last time that they have made in excess of 300 arrests in the child pornography area over the last 12 months or so. For things like online gaming we are working with industry. We have a meeting in Sydney tomorrow with key communications authority personnel to look at what we can do further in that area. The online gambling area is a difficult area, and we continue to work with industry to make sure that it is properly policed.

Senator BARNETT—Whose responsibility is online gambling? Is it yours, or state and territory police?

Mr Negus—There are Commonwealth offences for which the AFP has responsibility for enforcement.

Senator BARNETT—What sort of offences are we talking about?

Mr Negus—I might have to take that on notice and come back to you with a suite of offences that would be available.

Senator BARNETT—Alright, thanks. Moving to another area, I want to ask about some of the consultancies that you are currently undertaking. This relates to the Australian Institute of Police Management and the C&M Associates *Review of the sustainability and future operation of the Australian Institute of Police Management (AIPM)* on behalf of the Australia New Zealand Policing Advisory Agency. It was due for completion on 30 June this year at a cost of \$165,446. Can you tell us more about that report and the status of it?

Mr Keelty—That report, as you quite rightly pointed out, was commissioned following the creation of ANZPAA. We asked C&M Associates to undertake that review of the AIPM. Principally, the review is looking at areas such as whether the AIPM ought to be a more fundamental member of ANZPAA or whether it should sit alone. There is a review team being led by Mr Rob Robinson, the former commissioner of the New Zealand police force, Professor Peter Grabosky from the Australian National University, and Assistant Commissioner Barbara Etter from the Western Australian Police Service. The review will not

be completed on time because there has been another review required to be undertaken by Commissioner Rob Robinson to do with the Australian Crime Commission, so we have allowed his deadline to pass. We are all aware of 30 June and we will ask Rob to see if he can finish it as close as he can to that deadline. The primary focus of the review team at the moment is on drafting their final report; it is not as if they have not started it and got it under way.

Senator BARNETT—When did it start?

Mr Keelty—It started at the beginning of the year.

Senator BARNETT—Do you have terms of reference?

Mr Keelty—Yes, there are terms of reference.

Senator BARNETT—Could you take that on notice and provide that to us?

Mr Keelty—Certainly.

Senator BARNETT—There is a second consultancy relating to the accreditation of the AIPM with the New South Wales Department of Education and Training which is due for completion again by 30 June 2009. The approximate cost is \$60,000. Can you tell us about that? It is obviously getting a special amount of attention—AIPM.

Mr Keelty—For a number of reasons: one is the creation of ANZPAA; secondly, the redevelopment of the AIPM site; and, thirdly, we have just appointed a new Executive Director of the AIPM, Mr Tom Rogers, after a process involving me and the commissioner from Queensland and the commissioner from the Northern Territory. Mr Wood might have an answer to that specific consultancy.

Mr Wood—That particular consultancy is a regular process of maintaining the accreditation standards of the AIPM so that there is recognition for the diplomas and other certificates under the tertiary process that it issues.

Senator BARNETT—I do not know much about the AIPM. How many people are employed at the AIPM? I have read their objectives.

Mr Wood—I do not have that figure with me; I can probably find out.

Senator BARNETT—Is it going up or down? What is the strategic plan for AIPM or is that something you are still working out?

Mr Wood—The Robbie Robinson review is certainly, in part, about defining what all of the jurisdictions collectively want the institute to deliver over the next five to 10 years. At the moment, the institute is not in a phase of growth. It is delivering business as usual at the moment. On the review that Rob Robinson is doing, I do not have visibility of what his final recommendations are going to be, but we are certainly not expecting it to make a dramatic change to the scope and size of AIPM.

Senator BARNETT—Likewise, can you provide terms of reference for that report and take on notice, when that report is due, if we could have it or an executive summary of it? Are you happy to take that on notice?

Mr Wood—Certainly.

Mr Keelty—Just by way of explanation, it is the Australasian Institute of Police Management.

Senator BARNETT—It is New Zealand as well?

Mr Keelty—Yes. The commissioners, as well as the New Zealand commissioners, form a board, which I chair, that oversees the AIPM. There is a strategic plan. I am more than happy to share that with you. In fact, it may well be that, given the developments that are happening at AIPM, the committee—if the minister were to approve it—may have some interest in visiting the site and getting a better understanding of what is being done there. It is delivering executive leadership development for all state and territory police in Australia, as well as New Zealand. It is delivering police management development programs for all state and territory police, as well as New Zealand. It is delivering international programs for foreign police, particularly in leadership and management programs for developing police forces in the region. It has quite a body of work. Its staffing level, as you have asked the question, rises and falls depending on the number of courses that it has programmed. But the staff at AIPM are supplemented by a visiting fellow program that involves visiting fellows from state and territory police, as well as some of the international police forces. It is quite a comprehensive program.

Senator BARNETT—Thanks for that. I want to move to No. 256, ‘University of Queensland: conduct of an aviation client satisfaction survey, 23 June 2008, to conclude 11 July 2008—\$155,349’.

Mr Colvin—We may have to take that on notice. I suspect that it is part of normal business in terms of client satisfaction surveys that we outsource to universities, but I will have to take—

Senator BARNETT—What sort of satisfaction survey are we talking about? Which aviation clients?

Mr Colvin—It would be other airport industry clients satisfied with the service being provided by the AFP or our partners and stakeholders. I would have to take on notice the details of what the consultancy agreement is.

Senator BARNETT—Again, if you could take that on notice. If we could have a copy of the report and/or the executive summary, that would be appreciated.

Mr Wood—I should mention that the AFP has a structured series of client satisfaction surveys that are part of the way we report against the PBS in subsequent annual reports. So you will also see the results of some of those surveys in our annual reports, including the one that is coming up soon.

Senator BARNETT—Again, if you are happy to take on notice a list of those surveys and any results from those surveys—

Mr Wood—We will take on notice what you have requested.

Senator BARNETT—I have some questions about the corporate services group and answer to question on notice No. 118 in terms of your advertising expenditure. I notice it says: ‘Australian Federal Police—Christmas messages for overseas members. Advertising on Canberra Radio 106.33FM, \$11,970’. That seems like quite a lot of money at a time when we

have a global financial crisis. Perhaps you might be able to enlighten us as to why that was required and what that was designed to do.

Mr Wood—I am not across that particular expenditure. But I would have to say that, as part of our broader wellbeing responsibilities, we do take care to ensure we retain strong communications with our staff who are overseas. That particular communication activity, I am not across and I would have to take on notice to get more detail.

Senator BARNETT—Can we get that swiftly?

Mr Wood—We should be able to.

Mr Keelty—What do you exactly want to know, Senator?

Senator BARNETT—I am interested to know what you are doing. It says: ‘Christmas messages for overseas members,’ and it talks about advertising on Canberra radio. And it is for \$11,970.

Mr Keelty—It is a series of personal messages from our police who are serving in places like Afghanistan, the Sudan, East Timor and the Solomon Islands. It is both touching base with the community here in Canberra and letting people understand what their police are actually doing and also enables recruitment through a very subtle way of getting general and broad understanding within the community about what our police are actually doing. And \$11,000 is not a lot of money for that sort of publicity. It does raise the morale of the people who are stuck in the field at times like Christmas and Easter when everyone else is on holidays.

Senator BARNETT—But where does it go to? Where does this radio message get sent?

Mr Keelty—To the community of Canberra.

Senator BARNETT—Just the community of Canberra?

Mr Keelty—That is right; where a lot of these people are domiciled. It demonstrates to the community what their police are doing through the Christmas and New Year period. It is not unlike—

Senator BARNETT—But it is not actually in any way being sent to the Solomon Islands, East Timor or—

Mr Keelty—It is actually recorded in the Solomon Islands. So the people know that it is happening and, of course, it reaches the families and the community here in Canberra.

CHAIR—Like you said, it is similar to what the Defence Force do with their people overseas. They send Christmas greetings to people back home.

Mr Keelty—Exactly, Madam Chair.

Senator BARNETT—Anyway, thanks for that. If you can provide further and better particulars on notice, that would be appreciated. There is also the proposed ‘Airport security campaign—market research, \$70,000’.

Mr Wood—Do you have the reference number for that, please.

Senator BARNETT—It is the same question: answer to question on notice 118. It is immediately underneath the ‘Christmas message for overseas members’.

Mr Colvin—Could you just repeat the title of it.

Senator BARNETT—'Airport security campaign—market research, \$70,000'. It says—in brackets—'proposed'.

Mr Colvin—We would have to take it on notice. I imagine it is just a normal part of business again, in the sense of testing the market and testing the stakeholders to make sure that we are delivering the service that they want, but we will have to provide the details on notice.

Senator BARNETT—But it is obviously proposed. It is something that you are envisaging undertaking in the near future, I assume. Is this an annual fee that is paid or is it a one-off?

Mr Colvin—I would have to take it on notice. I am not sure.

Senator BARNETT—Again, if you could let us know as soon as possible. I have a few more questions. I wonder if you could respond to the media speculation and commentary about the RBA bribes:

Action on RBA 'bribes'

THE Australian Federal Police could launch a formal investigation into suggestions that a company half-owned by the Reserve Bank of Australia was indirectly involved in paying multimillion-dollar bribes to foreign government officials to win banknote-printing contracts.

And there have been a number of other articles you may have noticed over the last several days: 'RBA linked to dodgy payments', 'Top bank snared in shady third world deals' et cetera. Can you provide a status report on that?

Mr Keelty—I will ask Deputy Commissioner Negus to answer that—I am still stunned by the comments of the chair that we might still be here after morning tea. I thought we might get a reprieve today.

Mr Negus—Senator, you are quite right; the article did appear in the weekend press. We have had a referral forwarded to us from the Reserve Bank of Australia, and we are currently evaluating that. On the back of that, we have already spoken to members of the Reserve Bank to elicit as much information as we possibly can. We have also spoken to the journalist who wrote the story to elicit as much information as we can. But, given this only occurred a matter of three or four days ago in the media, we are still pulling the information together and evaluating the referral of that investigation. But, certainly, the allegations made in that article are serious and they are being treated as such.

Senator BARNETT—Are you investigating the matter formally?

Mr Negus—We have received a referral. What we do as a matter of process is look at the matter, assess all the available information, identify whether there are Commonwealth offences potentially committed—and in this case that looks like being the case. The formal evaluation process is still under way and we are still gathering the relevant material from those involved, including the journalist and the RBA.

Senator BARNETT—Sure. It is just that the articles I have here—Saturday 23 May, Sunday 24 May—are quite extensive. Today is Tuesday. I thought you may have kicked off a formal investigation by now.

Mr Negus—I had personal discussions with people over the weekend about this. It is ‘kicked off’ to the extent that we are running it through the normal process of evaluation and collection of material, and then we will move on from there.

Senator BARNETT—Have you advised the federal minister concerned of the probable investigation or likely investigation?

Mr Negus—Not at this point. Certainly the office of the Minister for Home Affairs is aware of this.

Senator BARNETT—Have you contacted the minister?

Mr Negus—I have spoken to our law enforcement liaison officer in that office and advised him of the referral.

Senator BARNETT—When did that occur?

Mr Negus—I think it was Saturday night or Sunday—it was certainly over the weekend.

Senator BARNETT—And what was their response?

Mr Negus—No response. It was just really a notification. There was no response elicited.

Senator BARNETT—So you are taking this pretty seriously? The allegations set out in the articles are quite concerning.

Mr Negus—Absolutely. The Reserve Bank are taking this very seriously, and in conversations I had over the weekend they were very concerned about this and very keen for the AFP to become involved to get to the bottom of the allegations.

Senator BARNETT—Thanks.

Mr Wood—Just before you go on to your next question: I notice that, in relation to the \$70-odd-thousand of aviation proposed consultancies, the only ones I have on the proposed list are internal audits. That may explain—

Senator BARNETT—This is under the heading of ‘advertising’. That is why I asked the question. It was \$70,000. It is quite a lot of money, and it is referred to as ‘research’. So I assume you are about to conduct a major campaign, if you are going to do \$70,000 worth of research into the form of advertising that you will plan. I am trying to ascertain what this plan is and what sort of security campaign we can expect in the months ahead.

Mr Wood—Okay. Thanks for clarifying.

Senator BARNETT—So you will get back to us?

Mr Wood—Absolutely.

Senator BARNETT—Thanks for that. I wanted to ask you again about a question on notice from February, No. 39, highlighting what I consider a reasonably high number of referrals regarding the Confidante Network. It says:

In the current financial year (1 July 2008 to 23 February 2009) there have been 103 referrals to the Confidant Network.

It seems high. If you can compare it to a previous financial year that would be helpful, and could you advise how the Australian Federal Police is responding to those referrals.

Mr Wood—I know we have given numbers at previous Senate estimates. I do not believe I have those numbers with me, but I can certainly get them and provide them to the committee. In the second half of last calendar year the two deputy commissioners and I went around and spoke to every member of staff nationally about values within the organisation, and we specifically emphasised the role of the Confidant Network and hence increased the encouragement for staff to use that network as a confidential mechanism by which they could talk about issues that they had in the workplace and/or progress an issue where they felt something needed to be done. Depending on the degree or extent of the issue that is discussed with a confidant, in some cases the matters are resolved in that conversation between the individual that approaches the confidant and the confidant himself or herself. In some cases they are escalated to the supervisor who is responsible for that work area. In other cases they are referred to the professional standards area of the organisation for formal categorisation of the complaint and then dealt with under our normal professional standards mechanisms. Where through that process it is identified that it falls under a matter that has mandatory reporting to ACLEI or some other body such as the ombudsman then that referral also occurs. So there is an escalation mechanism. The figures that I have seen, that I do not have with me, would indicate that certainly most referrals or approaches to a member of the Confidant Network are dealt with in the local workplace, and that certainly is the way that we expect the mechanism to operate.

Senator BARNETT—Most of them are dealt with within the local workplace?

Mr Wood—Correct.

Mr Keelty—I think the bottom line is that, whilst there is a spike in the use of the network, to me that is good news. Last year, as Mr Wood said, I sent both the deputies and Mr Wood to every workplace in the AFP to talk about the values of the organisation. There has been a corresponding increase in the use of the Confidant Network, and that is what it is there to do. There has not been an increase, that I have certainly noticed, in actual investigations by the professional standards area, and I meet with the professional standards area each week. It is in fact a good news story. It means that the system we have in place as an anticorruption measure is actually working.

Senator BARNETT—It means that the system we had in place previously was not working as well as it should, perhaps.

Mr Keelty—No, what it means is that, like in every organisation, we had a campaign specifically driven at the values of this organisation. One of the reasons for doing that was that, in the course of the last couple of years, we have had an influx of people come into the organisation, some of whom have come from other organisations. Those other organisations do not necessarily share the values of the AFP. It was a values driven exercise to try and unify the organisation to get it to understand where it sits in the scheme of things in terms of integrity.

Senator BARNETT—I guess you can look at it in different ways, but I appreciate your feedback on that. I am interested to know, of those 103, whether you know exactly what happened. We have a response from Mr Wood that most of them are dealt with internally. Can you provide more details in terms of exactly what happened as a proportion, percentage wise,

and if they did end up with ACLEI, the ombudsman or somewhere else? These are pretty serious matters that we are dealing with, and I think there should be a report on how they are dealt with and where they go.

Mr Keelty—We can do that. I do not have the figures in front of me, but I can tell you with great confidence that not many, if any, resulted in referrals to either the Ombudsman or to ACLEI, although there may be one exception. I frequently meet with the Integrity Commissioner and I frequently meet with the Ombudsman to ensure that I have a temperature check on where things are going in the organisation. The important statistic will be: how many of these converted to professional standards investigations?

Senator BARNETT—Do you know that figure?

Mr Keelty—No, not off the top of my head. But it is a figure that would not be hard to obtain.

Senator BARNETT—Ten per cent, or less than that?

Mr Keelty—I would only be guessing. As Mr Wood said, a lot of these issues are resolved. Some of them, as a result of the campaign we ran last year, were questions about ethical dilemmas. Some of them were quite simple. It was actually quite encouraging that people felt they could come and ask—

Senator BARNETT—It would give us some reassurance to know more detail about how they are handled and what happens to these 103 referrals to the confidant network. Otherwise it leaves a question for people like us in this committee and in the public arena. I am interested to know the figures from the last three years in terms of referrals to the confidant network. Mr Wood, do you have anything else that you want to share with us?

Mr Wood—We will be able to get that data fairly quickly. All I was going to add is that we do report on the activities of that particular network. More broadly, PRS is part of our annual report as well, so there will be some historical data to put the new data we provide for you in context.

Senator BARNETT—Thanks for that. Finally, I have a question about the bill of rights that is being discussed and promoted in and around the country. We had a very lengthy session yesterday with the Australian Human Rights Commission, a taxpayer funded body, and they are proactively, up hill and down dale, promoting a charter of rights for Australia. Perhaps we have a good proportion of the population against and a good proportion for this, but we do not know. It is being debated in the public arena, as you know. I am interested to know whether you are aware of the Police Federation's submission to the inquiry into a charter of human rights for Australia. Are you aware of their concerns about the charter? Are you familiar with it, can you respond to that submission and do you have a view with respect to the consequences of such a charter?

Mr Keelty—I am not personally aware of the PFA's submission. I arranged for Father Frank Brennan, the chair of the committee, to make a presentation to all the Australian police commissioners at the recent police commissioners meeting in Darwin. We are broadly aware of the direction of the committee. You might be aware that former AFP Commissioner Mick Palmer is also on the committee. The ACT already has a bill of rights, so there is a proportion

of the AFP that is already very familiar with the operational side of such a policy. But we are still in a position where we are talking to the committee, and I think we have further meetings with the committee.

Senator BARNETT—Does that mean that you will participate in the debate or the discussions? Would you be taking a view or participating in these discussions?

Mr Keelty—Consulting with the committee is what we have been doing so far, and we will continue to do that.

Senator BARNETT—For what purpose?

Mr Keelty—To get an understanding of the direction they are going in and to enable us to put forward our views on the direction they are going in.

Senator BARNETT—So you would be considering the options that are being debated, discussed and put forward to this committee through Father Frank Brennan and his committee. That committee is moving all around the country—again, up hill and down dale—but they officially do not have a position. They are simply putting the options to the people and no doubt did so with your officers when they consulted with you. Are you monitoring the options that may be put forward and that may end up coming before a parliament, which of course would end up impacting on your role as police officers?

Mr Keelty—As I understand it, they are a long way from doing that. At the moment it is a discussion phase, and we have been quite happy to participate in the discussion phase—as I say, remembering that, of course, our ACT component of the AFP is already working within that sort of framework within the ACT.

Senator BARNETT—Have they expressed concerns to you about the impact on their work arrangements and the way they operate?

Mr Keelty—In his discussions with me, the Chief Police Officer of the ACT and I have talked about the fact that most of the issues that are raised are actually enshrined in legislation already anyway, particularly the rights of individuals when they are under interview by police, the rights of individuals when they are being talked to by police, the rights of individuals when they do not speak English and when they come from different backgrounds. So a fair piece of the policy is already in work in practice within policing, but we will continue to have the dialogue. It is a positive discussion we have been having with the committee thus far.

Senator BARNETT—So you will continue with that dialogue and that committee. Do you envisage that the AFP will have a position or a view? Will you make a submission or have you made a submission to that committee or put forward any views?

Mr Keelty—We have not made a submission as yet. We have individual people who I have identified to discuss with the committee. I have to be careful; I do not want to commit the organisation to something beyond my term as commissioner. At the moment, all that is happening is that we are part of the dialogue, and I think that is where the committee is at.

Senator BARNETT—Have you had any liaison with your UK counterparts regarding their charter? In the UK some people refer to the charter as the ‘criminals charter’ rather than the human rights charter.

Senator BRANDIS—The ‘villains charter’ is, I think, the expression.

Senator BARNETT—I think I have read ‘criminals’—

Senator BRANDIS—Mr Jack Straw used it.

Senator BARNETT—Jack Straw, the former foreign secretary, referred to it as the ‘villains charter’, I am advised; not a ‘criminals charter’.

Mr Keelty—I am familiar with the UK political rhetoric on the charter. One of the presentations we had with the commissioners was from Sir Hugh Orde, who is Chief Constable of the Police Service of Northern Ireland. He specifically discussed the impact of the policy within the United Kingdom. Basically, they are working within it. His was a very positive presentation. So I am familiar with it. As I say, while I am commissioner, we will continue to have the dialogue, and I will be very interested to see where it goes.

Senator BARNETT—I do have one final question before I pass to my colleagues, and that goes to the Beale review of police capability. Where is the status report up to and when do you expect to receive the report?

Mr Keelty—That is being handled by the department.

Mr Jordana—The audit commenced in February 2009. As you indicated, it is being led by Mr Roger Beale. The final report will be provided to the government on 30 June 2009. That is current timetable for its completion.

Senator BARNETT—Are you having regular meetings with Mr Beale and his team?

Mr Jordana—Yes.

Senator BARNETT—How regular?

Mr Jordana—Mr Beale is obviously having a whole range of meetings with a whole range of stakeholders—not only with us and the AFP but also a lot of other interested parties at the Commonwealth, state and territory levels.

Senator BARNETT—How often do you meet with him?

Mr Jordana—Personally?

Senator BARNETT—Yes.

Mr Jordana—I have only met with him a couple of times. In terms of the department meeting with him, I will ask Elizabeth Kelly to respond to that.

Ms Kelly—As part of the governance of the Beale audit, an executive reference group was established, and that is co-chaired by Mr Wilkins, the secretary of the department, and Mr Wood at the end of the table. That group has met twice already and it is due to meet tomorrow afternoon for its third meeting. Another meeting is envisaged before 30 June.

Senator BARNETT—Who else is on that panel?

Ms Kelly—There are representatives from the Department of the Prime Minister and Cabinet, the Treasury—

Senator BARNETT—Can you identify them?

Ms Kelly—The representation varies from time to time. I think the formal member is the Deputy National Security Adviser, but from time to time the head of the Domestic Security Branch attends in his place. In relation to the Department of the Treasury, I am sorry but I cannot recall the name. In relation to the Department of Finance and Deregulation, I think it is Mr Gareth Hall.

Senator BARNETT—You will take that on notice and confirm the names and identities?

Ms Kelly—Yes.

Senator BARNETT—You have had three meetings since February—

Ms Kelly—The third meeting is tomorrow afternoon.

Senator BARNETT—with one more prior to 30 June?

Ms Kelly—That is correct. That is the formal consultation mechanism. I understand Mr Beale is consulting widely throughout government and stakeholders in his capacity as the reviewer, but for the formal consultation with the department, the AFP and other stakeholders within government, the executive reference group is the vehicle for that.

Senator BARNETT—In an answer to a question on notice about the cost of the report—I referred to this yesterday when discussing with Mr Wilkins—I think it was \$553 an hour. Can you confirm that and the total cost of the report?

Ms Kelly—The information provided in response to the question on notice is correct. To date, the expenditure has been \$66,290.40, so that is the only invoice that has been paid to date. There will be further invoices as the audit progresses. I have no information to suggest that it will not be completed as projected within that budget.

Senator BARNETT—Remind the committee of the budget. It is a four-days-a-week job, correct?

Ms Kelly—That is correct. I should say, as well, that there are some travel costs in addition to the professional costs of Mr Beale. There have been travel costs of \$31,660.29 to date.

Senator BARNETT—Of course. Remind us of the total cost.

Ms Kelly—It is up to a maximum of \$320,000 plus GST, if I understand it.

Senator BARNETT—That is \$553 an hour, correct?

Ms Kelly—\$558 per hour plus GST.

Senator BARNETT—Thank you very much.

Mr Wood—I have an answer to one of the questions of Senator Barnett. You asked if we could quickly find out the number of staff at the AIPM. There are 25 employees who are all employed under the AFP Act plus six visiting fellows at the AIPM, for a total of 31.

Senator BARNETT—I assume they are all based in Canberra.

Mr Wood—They are all based in Manly, Sydney, where the institute is located.

Senator BARNETT—Are they full-time visiting fellows? How does that work?

Mr Keelty—Their services are offered by the state and territory police, so they are not a cost to the AFP.

Senator BARNETT—And they are there for a limited time?

Mr Keelty—They spend up to 12 months as visiting fellows.

Senator BARNETT—That sounds good.

Ms Kelly—I have the information about the members of the executive reference group now. It is Mr Wilkins and Mr Wood as co-chairs, Mr Brendan Sargeant from the Department of Finance and Deregulation, Mr Angus Campbell, the Deputy National Security Adviser and Mr Steve French, General Manager at the Treasury.

Senator BARNETT—Thank you very much.

Senator BRANDIS—I have a number of questions on a diverse range of topics. By the way, Commissioner Keelty, I was not in the room at the commencement of the morning's proceedings, so I add my own felicitations to you on your imminent retirement.

Mr Keelty—Thank you.

Senator BRANDIS—Did you see or have you been made aware of the report on the ABC's *Four Corners* program last night about Paul Henry Dean, the Australian child sex offender in India?

Mr Keelty—Yes, I have.

Senator BRANDIS—Commissioner Keelty, am I right in understanding that in about 2005 the AFP reviewed about 1,700 child sex tourism cases after the case involving the former DFAT officer William Brown? Did that review take place?

Mr Keelty—I do not have the detail of that. I am not sure where that figure is coming from.

Senator BRANDIS—Do not worry so much about the figure. What I am trying to get at is whether in or about 2005, or indeed at any time in the recent past, the AFP has had a good look at the case of Paul Henry Dean in particular, of course, with a view to determining whether he has committed offences under section 50AA of the child sex tourism and international child sex offence provisions of the Crimes Act.

Mr Keelty—That is correct.

Senator BRANDIS—The AFP has looked at his case recently?

Mr Keelty—That is correct.

Senator BRANDIS—Without, obviously, going into operational matters, what steps did the AFP take in relation to the Dean case?

Mr Keelty—Obviously, the allegations are that Mr Dean is domiciled in India. Since April 2006, we have been attempting to place a liaison officer in India to help facilitate a number of investigations in that country, but as yet that has not occurred. In relation to Mr Dean's case, the AFP has been unable to confirm whether the person currently held in Indian custody was the person who utilised the passport in the name of Alan Herbert Rose back in 1976. So there is an identity issue there that has to be worked through, but we have made repeated official requests for information from the Indian authorities that have remained unanswered. Requests have been sent on five separate occasions since November 2007, with the last request having

been made on 31 January 2009. The difficulty is that Mr Dean is not currently wanted in Australia and, whilst you quite rightly point out the extraterritorial reach of the legislation, one of the difficulties that has to worked through is the fact that Mr Dean is currently awaiting trial in India and we would set ourselves up for the double jeopardy situation if we were to pursue him following that trial. So to a degree we are in the hands of the Indian authorities and the outcome of prosecutions in India, remembering of course that Mr Dean is thought to have left Australia some 32 years ago. There is a limit to what we can actively do at this point in time, but it is not that we have not been doing anything.

Senator BRANDIS—I understand, Commissioner Keelty, that naturally there would be constraints on the AFP in investigating an offence of this character in a foreign jurisdiction and, to a degree, that depends upon the willingness of the foreign jurisdiction to cooperate with you. I understand that perfectly. It is your understanding, though, isn't it, that this man is an Australian citizen?

Mr Keelty—That is correct.

Senator BRANDIS—So under section 50AD of the Crimes Act he is a person to whom the child sex tourism provisions apply.

Mr Keelty—That is correct.

Senator BRANDIS—Without prejudging the matter, if the allegations aired last night are true then it is as plain as day that serial offences against division 2 of part IIIA concerning sexual offences against children under the age of 16 have been committed by this man.

Mr Keelty—On the basis of the program that was presented; but whilst the legislation in Australia does have extraterritorial reach all the evidence of the commission of those offences is in India. Our ability to obtain admissible evidence is dependent upon getting access through the Indian authorities, and the Indian authorities would say that they have him facing trial at the moment and would want us to wait for the outcome of that trial. It is a difficult situation. It is not as if we are not doing anything about it; we are doing as much as we can, given the international constraints under which we are operating.

Senator BRANDIS—I am not unsympathetic to that but what I understood you to say a few minutes ago was that you were not getting any cooperation from the Indian authorities and you referred to this series of requests which have not been responded to. Now you have just told me that you have been asked by the Indian authorities to await the outcome of their own criminal justice system. Those two seem to be different reasons for why you feel constrained. Are both of those reasons operative, or is there one rather than the other which is the principle reason the AFP feels constrained in its capacity to act here?

Mr Keelty—I may have misled you there. I do not know that we have been specifically told by the Indian authorities to await the outcome of the trial. It is something that we have observed, remembering that in normal circumstances we can really only apply the legislation where there is no existing legislation in the country in which the alleged offences are thought to have occurred. We are in a difficult policy space, but my first remark remains relevant: we have at least five requests that remain unanswered by the Indian authorities.

Senator BRANDIS—I do not wish to engage in a legal debate, but plainly part IIIA of the Crimes Act does not depend upon there having been a conviction in the overseas jurisdiction. The elements of the offences are satisfied if in fact the alleged conduct has taken place in a foreign jurisdiction by an Australian national in respect of a victim under the age of 16. While I can understand that the workings of the criminal justice system of the foreign jurisdiction may have some bearing upon this from a practical point of view, do you really have to wait for anything the Indians do before being satisfied that an offence warranting your investigation may have been committed or investigating it if you form that view?

Mr Keelty—The problem is that we cannot go to India and investigate these allegations without the consent of the Indian authorities. We have no authority to investigate these offences within India and to start gathering evidence without the consent of the Indian government.

Senator BRANDIS—Does there exist a treaty, or some form of cooperation or agreement below the level of a treaty, between the AFP and the Indian policing authorities?

Mr Keelty—Australia and India have a non-treaty extradition relationship based on the London Scheme for Extradition within the Commonwealth. As India has been declared to be an extradition country under the Extradition (Commonwealth Countries) Regulations 1998 legislation, Australia can receive requests from, as well as make extradition requests to, India.

Senator BRANDIS—Alright. Does that not provide the Australian Federal Police with some capacity consistent with Australia's rights and India's obligations under that scheme to investigate whether extraditable offences might have been committed in India?

Mr Keelty—I would ask the department to answer that.

Ms Kelly—The departmental division responsible for extradition and mutual assistance will be here at 8 o'clock this evening. I am afraid that is not within the responsibility of any of the persons present at the moment.

Senator BRANDIS—I will ask them about that. Commissioner Keelty, I am not asking you about this as a lawyer as it were, but surely as the man in charge of the AFP's operations, including its international operations, you must be aware of what capabilities and constraints are upon you in relation to investigating offences committed in countries with which Australia has extradition agreements. You can do something in India, can you not?

Mr Keelty—There is not a lot more we can do other than to continue to make requests of the Indian government.

Senator BRANDIS—You have said there were at least five requests between November 2007 and 31 January 2009. I think you said to me that they had all been unresponded to. Is that literally true, that you did not even get an answer to your correspondence?

Mr Keelty—That is correct.

Senator BRANDIS—Has this been pursued by DFAT through diplomatic channels, or is it not the custom of the AFP in these circumstances to seek for that to be done?

Mr Keelty—Unfortunately it is a difficulty that arises frequently with requests of a country such as India that has got, obviously, a significant number of other priorities. As I understand it we have raised it with DFAT.

Senator BRANDIS—When did you do that?

Mr Keelty—I will have to take that on notice.

Senator BRANDIS—Was it within the past 12 months.

Mr Keelty—I think that generally DFAT are aware of the difficulties we are having in this particular matter, but obviously it is not the only matter that we are having difficulty with that we might raise with DFAT.

Senator BRANDIS—I will pursue this with DFAT next week but it would help me and, I daresay, could not do any harm from your point of view if I were able to pursue this matter with DFAT with as much particular knowledge as you can give me. Approximately when, if you do not want to give me the date, was this matter raised with DFAT?

Mr Keelty—I do not have the date in front of me, otherwise I would give it to you.

Senator BRANDIS—Was it within the last 12 months?

Mr Keelty—I cannot give you the answer. As you can see, we have made five requests. Those requests, as I understand it, would go through the DFAT channel to the High Commission in India. But I just need to get my facts right on that to make sure that is true.

Senator BRANDIS—If you take that on notice would you favour me by having the answer to me by the end of this week so I could pursue that with DFAT.

Mr Keelty—Certainly.

Senator BRANDIS—And how many times have you raised this with DFAT?

Mr Keelty—I will get the answer to that one as well.

Senator BRANDIS—Thank you. To the extent to which the AFP is apprised of the Dean case, I take it that within the AFP it is basically just a file on some officer's desk? There is no on-the-ground investigation going on by AFP officers?

Mr Keelty—The problem with the on-the-ground investigation is that the on-the-ground investigation actually needs to occur in India.

Senator BRANDIS—You have made that very clear, so to the extent to which the AFP is apprised of this case, its involvement consists of maintaining a file within Australia on the case. Is that right?

Mr Keelty—That is correct, but it is not a dormant file. As you can see, people have been active on the file. It is a file that also goes hand in hand with the requests we have been making of the Indian government to get a liaison officer in place in India.

Senator BRANDIS—I suspect you will want to take this on notice too: can you tell me when that file was created?

Mr Keelty—I will take it on notice.

Senator BRANDIS—Sure. How many AFP officers are working on the Dean case at the moment?

Mr Keelty—The case is being worked on out of our high-tech crime operations, where they do a large number of these child sex matters. The actual number on this particular case, I am not sure. I am advised it would be a case officer.

Senator BRANDIS—One case officer. Would that be his full-time work or would that be one of a number of cases on which he was working?

Mr Keelty—It would be one of a number of cases.

Senator BRANDIS—I refer to the portfolio budget statement and to outcome 1, program 1.1, ‘criminal investigations’, component 1.1.3, ‘terrorism’, which begins at page 173. If you look at the expenditure table for counterterrorism, at the top of page 174, it reveals that expenditure by the Australian Federal Police on counterterrorism in 2009-10 is budgeted at \$27.3 million, a reduction of about \$1.4 million from \$28.7 million in 2008-09. Can you tell me what aspects of the Australian Federal Police’s counterterrorism operations have been cut back as a result of this reduction in the counterterrorism budget?

Mr Wood—The middle line on that table indicates 50 per cent of the reduction, where expenses not requiring appropriation in the budget year are reducing from \$686,000 to \$23,000, which results in—

Senator BRANDIS—But that is only from \$686,000 to \$23,000.

Mr Wood—As I indicated it is about half.

Senator BRANDIS—Even allowing for that, there has still been a significant reduction.

Mr Wood—Allowing for that, the reduction is roughly half the total—

Senator BRANDIS—But still a significant reduction.

Mr Wood—The budget extended a number of lapsing programs in this area.

Senator BRANDIS—Spend less money on them.

Mr Wood—Less money by some hundreds of thousands out of \$27 million—that is correct.

Senator BRANDIS—Even making every generous assumption in your favour and netting off the \$23,000 for expenses not requiring appropriation from the \$686,000 in the previous year, so we get to a figure of \$663,000—

Mr Wood—That is correct.

Senator BRANDIS—There has still been a reduction of more than half a million dollars in the AFP’s counterterrorism programs, as you seem to acknowledge. I know I should not ask you to comment on policy issues; this is a decision of the Rudd government, to reduce Australia’s counterterrorism capability and the outlay of public money spent on counterterrorism programs through the AFP. So I will not do that. But I would like to know the effect of this reduction—which, on even the most generous view of this table, is a substantial reduction of more than half a million dollars—on the AFP’s counterterrorism operation.

Mr Wood—I can only repeat that there have been no programs that have been ceased through the process.

Senator BRANDIS—No programs have been ceased. There is just less money going to the programs.

Mr Wood—It may well reflect a number of things, including all areas of the organisation making their own contribution to the 1¼ per cent efficiency dividend. So there are a number of ons and offs that occur right across the budget of the AFP that are whole-of-government ons and offs. I am not aware of any specific decision in relation to the counterterrorism program to reduce the amount that you have just identified.

Senator BRANDIS—Thank you. We are just spending less money on it.

Senator Ludwig—Just so that there is no confusion over this area, I think it is also worth noting that—

Senator BRANDIS—I am not directing a question to you, Senator Ludwig.

Senator Ludwig—I am happy to make a comment, and I think it is reasonable that I do. What you have drawn is a statement that there is, in one program area in relation to the AFP—

Senator BRANDIS—Counterterrorism.

Senator Ludwig—In one program area—

Senator BRANDIS—The program area is called counterterrorism.

CHAIR—Senator Brandis, it would be useful if you could just let the minister finish what he is saying.

Senator BRANDIS—I have a point of order.

Senator Ludwig—I was speaking before your point of order, but there you go.

Senator BRANDIS—I have a point of order.

CHAIR—Senator Brandis, I am happy to take your point of order, but then I think we will give the minister the opportunity to finish what he wants to say.

Senator BRANDIS—My point of order is this. Members of the committee—of which Senator Ludwig is not one—are entitled to ask questions of the minister or of officers, and the minister is entitled, on behalf of the government, to respond on behalf of officers or to leave the response to officers. I have asked Commissioner Keelty some questions about these particular accounts. Commissioner Keelty directed my question to Mr Wood, who is the responsible officer. Mr Wood gave me a response—

Senator MARSHALL—Is there actually a point of order coming at some point?

Senator BRANDIS—Yes there is, Senator Marshall, if you can follow it. Mr Wood gave me a responsive answer. That was the end of the question, and that was the end of Mr Wood's answer. It is not, I submit, in order for a minister—after the answer has already been offered by the relevant officer—to try to put a political spin on the officer's answer. The question was asked, it was answered honestly, and I have moved on to a different topic.

Senator Ludwig—I think it is—

Senator BRANDIS—You cannot speak to a point of order. You are not a member of the committee.

Senator Ludwig—I can try.

CHAIR—Order! Senator Brandis, there is no point of order here. The minister is more than able—and, in fact, sometimes invited—to provide additional comment, which is what this minister is doing. So, Minister Ludwig, I would invite you to continue with your comments—uninterrupted, I would add.

Senator Ludwig—Thank you, Chair. It came about because the prefix to the question did say that this could amount to a policy question, and I think in that vein it is reasonable for the government to respond. It is on the AFP budget in total.

The total estimated AFP departmental budget for 2009-10 is \$1.361 billion. This is an increase of \$111 million on the 2008-09 actual revenue. Total appropriations for government for the 2009-10 is \$1,111.8 million. As I have said, this is a significant increase. This increase includes departmental new measures which involve additional new funding, including the renewal of terminated programs of \$140 million over four years plus a reduction in funding for lapsing programs of \$112.6 million over four years and savings measures totalling \$25.7 million over four years. Also, the AFP is to receive additional administered appropriation in 2009-10 totalling \$35.5 million, compared to \$7.7 million in 2008-09—a significant increase from the previous year.

The federal government takes very seriously the issue of ensuring that the AFP is funded appropriately. That is why I have been drawn in to answer the question in this way. We have provided significant funding for the AFP to meet its eventualities. The individual programs within that are, of course, matters for the AFP to decide how it is going to apportion its expenditures. We have also provided capital injections. Equity injections for the AFP in 2009-10 total \$51.9 million and the main components of the existing capital funding are the aviation security combination at 11 airports throughout Australia and their future operational systems funding.

In addition, the Attorney-General, Mr Robert McClelland, and the Minister for Home Affairs, Mr Bob Debus, indicated around \$100 million in funding over four years to go to strengthening Australia's national security framework as part of the government's \$685 million investment in national security. The Commonwealth government does take national security very seriously and we have sought to ensure that it is well funded. This funding will support counterterrorism efforts and enhance Australia's policing and intelligence capacity in our region. The Rudd government will provide \$2.8 million to the Australian Federal Police to enhance cooperation with law enforcement counterparts in South and South-East Asia to combat the threat of terrorism in our region, including against Australians and Australian interests.

CHAIR—Thank you, Minister. I want to remind people that we are going to morning tea at 10.30 am. I have made arrangements for Senator Ludlam to ask questions of the AFP when we resume at 10.35 am. Are there further questions on the AFP?

Senator BRANDIS—Yes. Mr Wood, while the minister was giving that little political advertisement, I was actually able to do the calculation. Even allowing for the special treatment, as you say, of the second line item in 2008-09 of \$686,000 as expenses not requiring appropriation in the budget year, the figure for the reduction in the counterterrorism program—that is component 1.1.3—compared to 2008-09 comes out at \$738,000. Does that compute with your assessment?

Mr Wood—That is correct.

Senator BRANDIS—Can I take you then, please, to the PBS again and table 2.1 at page 161, which is continued over to page 162. I am interested in the very final line of that table, ‘Average staffing level’. I understand that there are adjustments for full-time equivalent positions, casual positions and people on leave and so on, but I assume these figures take all that into account so as to provide the best figure for the staffing level. That table reveals that the average staffing level of your agency has gone from 5,357 in 2008-09 to 5,361 budgeted for in 2009-10—an increase in a staff establishment of almost 5½ thousand of four staff positions. Do you see that?

Mr Wood—Yes.

Senator BRANDIS—Does that include all administrative and support staff or is that only operational staff?

Mr Wood—That is all staff in outcome 1, including, therefore, administrative close operational support as well as operational support.

Senator BRANDIS—So that is—if I can use the vernacular expression—both the officers on the ground and the administrative and support personnel who run the AFP administratively?

Mr Wood—That is correct.

Senator BRANDIS—That is an increase of four people over the year.

Mr Wood—That is correct.

Senator BRANDIS—Okay, thank you. I just wanted to make sure I was not reading that incorrectly. We heard some evidence, you will remember, Commissioner Keelty, at the last Senate estimates of the Air Security Officer Program, and either you or one of the officers to whom I was directing my questions confirmed that the number of officers allocated to that program had been reduced. If we go to Budget Paper No. 2, the budget measures statement, on page 88 you will see that there is no new money for that program—see the second of the tables there.

Mr Wood—The reason the table does not have additional dollars in it is that it was a lapsing program. Those dollars were already in the forward estimates.

Senator BRANDIS—It was a lapsing program? I see the sentence: ‘Future funding arrangements will be reviewed in the 2010-11 budget.’ So, subject to the decision of the government in preparing next year’s budget, that program would, if not continued, lapse next year?

Mr Wood—Correct. So this budget extended it for a further year and requested a review during that financial year to feed into the 2010-11 budget process.

Senator BRANDIS—By the way, while we happen to be on page 88 of the budget measures, if you look immediately to the top of that page, you will see that the Australian Federal Police over the next four years is budgeted to provide \$1.2 million per year in each of the next four years—so \$4.8 million—to Australian assistance for law and justice frameworks in Africa. That is seven times as much as the amount by which the counterterrorism budget has been reduced—as you have confirmed. To which African countries will the Australian Federal Police—this is line two of the table—be providing assistance for law and justice frameworks? In particular, do they include Botswana, Tanzania, Kenya and Namibia?

Senator Ludwig—Just in response to that, Chair, there should be borne in mind that—

Senator BRANDIS—Are you able to tell me whether it includes those four countries, Minister? Because that is the question I am asking.

Senator Ludwig—We might get to that.

Senator BRANDIS—Well, I doubt it—not from you.

Senator Ludwig—Well, that is interesting—

Senator BRANDIS—I am sure the officers—

Senator Ludwig—Let us not engage in banter across the table. Let me respond more broadly—

Senator BRANDIS—who are in possession of the facts are in a position to answer my questions.

CHAIR—Senator Brandis, the Minister has the call.

Senator Ludwig—Let me respond more broadly to your question. I am entitled to respond to your question—and we will come to the particular detail. In context, the government has provided the Australian Federal Police with \$438.8 million for their work in the Solomon Islands. Australia will continue to assist in establishing an effective policing service in that area. But there is, in addition, \$26.7 million in Indonesia and \$2.7 million in Sudan. This Australian Federal Police will receive \$29.3 million to maintain its current deployments through mentoring and advice, and this includes the Jakarta Centre for Law Enforcement Cooperation, the United Nations Mission in the Sudan. In Pakistan \$18.8 million will be made available to provide training assistance to local police—

Senator BRANDIS—Madam Chair, I have a point of order. Plainly, this has nothing to do with the table on page 88 of Budget Paper No. 2 to which my question was specifically directed.

Senator Ludwig—I was just coming to that. In Africa \$17.5 million will provide technical assistance to develop forensic investigation capabilities for transnational crime investigation, to develop operational capacity to detect the laundering of money of major crime proceeds and to strengthen legal frameworks. That is the purpose of the money for Africa. It is about improving cooperation, fighting money-laundering and ensuring that we strengthen legal frameworks and capacity.

Senator BRANDIS—It has nothing to do with this table, and you do not know what you are talking about.

CHAIR—The committee will suspend for morning tea.

Proceedings suspended from 10.30 am to 10.45 am

CHAIR—The committee will reconvene. Senator Ludlam, it is your call.

Senator LUDLAM—Thanks, gentlemen, for joining us this morning. I will start with a fairly general one. In the budget overview, it looks like the AFP have gone from about \$1.28 million in the last budget to \$1.39 million in this budget. Personnel have been reduced by about 14—is that correct?

Mr Wood—That is correct. The reduction is in outcome 2 and specifically in ACT policing, which is not a Commonwealth appropriation; it is appropriation we receive from the ACT government. It does not relate to outcome 1—that is, the general nation and international operations of the AFP, where there is a slight increase in the number in that portion of the budget.

Senator LUDLAM—So that item has moved sideways and has not decreased?

Mr Keelty—It is not so much a matter of moving sideways. However, you are right, there is a \$111 million net increase in the budget from last year to this financial year, but the reduction in staff is in ACT policing. ACT policing is on a cost-recovery basis with an appropriation from the ACT government. It is not a reduction in the national figures.

Senator LUDLAM—Thank you. There was some reporting yesterday that the AFP is charging an additional \$1.6 million for perimeter protection of this building. Can you explain that large jump of nearly 16 per cent? Are the demands on your agency higher? Can you give some background to that?

Mr Keelty—We did answer the question earlier today. I will ask Acting Deputy Commission Colvin to address that.

Senator LUDLAM—Just briefly, and I will check the *Hansard*.

Mr Colvin—It effectively relates to unit costs. It is not an increase in the number of personnel used to provide that service. That is still in negotiation with the department. That is not an established firm figure at this point. It relates to the unit cost; the cost of providing the service. We offer a full cost recovery service, so it is a matter of what the service costs and that is what we bill our client.

Senator LUDLAM—Thank you. You received nearly \$83 million over four years to respond, investigate and disrupt terrorist activities offshore. Can you tell us in what country those activities are primarily focused?

Mr Keelty—Primarily, Indonesia but also the Philippines and Thailand, as well as a number of placements in other agencies in the United States and the United Kingdom.

Senator LUDLAM—What is the magnitude of that increase for those offshore operations in particular?

Mr Keelty—It is not an increase; it is a continuation of the funding we had over the previous years.

Senator LUDLAM—Can you provide the number of the AFP personnel and the total expenditure for the AFP to provide security at the ANSTO facility at Lucas Heights?

Mr Keelty—I am sure not sure that we have those figures. We might be able to get them during the course of this hearing.

Senator LUDLAM—Okay. I have another one along similar lines: the number of personnel and expenditure for AFP uniform protection for protective security at the joint defence facilities at Pine Gap.

Mr Keelty—We have rolled up figures for protection. Can we take that on notice to give you specific answers to those?

Senator LUDLAM—If you can unroll them for me that would be great. I think that in the October session I asked about the AFP's work with the police force in Burma, and also jointly at a training centre in Indonesia, and you provided some answers to questions on notice to us. Is there any update on that material which was provided last October? For example, you stated that you do not work with the military; you work with the civilian police force, which has been separate since 1885. Obviously, the judicial system in Burma is corrupt—if I could be so blunt. Can you provide us with some detail of the sort of work you do; whether that work is ongoing and whether you have any concerns about cooperation or perceived cooperation with that regime?

Mr Keelty—The sort of work that is done is in conjunction with other agencies who are represented in Burma such as the United Nations Office on Drugs and Crime. It is mainly in developmental work, training them in the areas particularly of drug marketing and illicit drug manufacture and distribution. We are very conscious of the situation over there, but we are also very conscious of the need to be there and trying to assist them to become, if you like, accountable and proficient in some of their counternarcotics activities.

Senator LUDLAM—Are there law enforcement agencies from other countries represented in a similar capacity in Burma?

Mr Keelty—There are, and I have actually met with some of them historically in another capacity. I do not have what other countries are present here, but there are others. I know the United States Drug Enforcement Agency is present, but just off the top of my head I cannot think of the other agencies. I can get back to you.

Senator LUDLAM—Thanks. What is the umbrella organisation over it? Is it the United Nations agency that coordinates that activity, or is it bilaterally—

Mr Keelty—We are there bilaterally, working out of the Australian Embassy in Rangoon. We work with the Myanmar National Police.

Senator LUDLAM—Counternarcotics work is obviously laudable, and I do not think that anybody would disagree with that anywhere. But are you concerned that some of the various kinds of techniques that you would be training in and teaching to those police can then very easily be turned to less savoury activities on behalf of the police force there?

Mr Keelty—We are very aware of that. We understand the sort of difficulty that can arise from the development we impart in the country if we train them in ways that certainly would not be acceptable under our own conditions here in Australia. But we have taken the view that we are better off being there with them than being on the outside criticising them for inaction or inability. It is a difficult area and we are conscious of all the ramifications of being there.

Senator LUDLAM—The answers that you provided to the questions on notice were actually very detailed and precise. I would like to note that I do appreciate that. I have a question with regard to the clearance that you need to get from DFAT in order to include Burmese police in the training and programs that you have described: do you have open permission to engage with Burmese police units or is there ongoing dialogue between you and the Department of Foreign Affairs and Trade?

Mr Keelty—We work through our mission in Burma. DFAT have an understanding of the work we do; it is very transparent and the idea is to increase the civilian capacity of the Myanmar National Police as opposed to the military capacity.

Senator LUDLAM—But is there a clear distinction?

Mr Keelty—There is. They do work quite independently of the military, and I have seen that firsthand. We are very conscious of the ramifications of being there, but obviously we have taken the view that we are better off being there than not being there.

Senator LUDLAM—Apart from counternarcotics work, what kind of work are your officers engaged in there?

Mr Keelty—It is largely in the counternarcotics area because of the difficulties with other forms of assistance. Obviously if there are other types of transnational crimes through Burma that are impacting on Australia such as people-smuggling or whatever it might be, though principally it is narcotics manufacture and distribution, we will assist them with that.

Senator LUDLAM—It has been put to me that this is in fact a criminal regime. Do you have threshold conditions on which you would withdraw that cooperation and support?

Mr Keelty—Certainly we would not provide cooperation where that cooperation would result in offences occurring either in Burma or in Australia. We are very conscious of the political situation but, at the same time, we are aware of the advantages of being there with other agencies trying to develop their capability and certainly trying to get an understanding of the impact of their narcotics production.

Senator LUDLAM—What is the state of narcotics production coming out of Burma over the last little period? How successful would you describe the work that you are doing there?

Mr Keelty—There has been a significant reduction in heroin being trafficked from Burma to Australia since the introduction of our programs there. We can give you the figures on that over a period of time, but there has been a significant impact. About 70 per cent of heroin that was coming to Australia was coming out of the Golden Triangle area and, of course, over time the heroin production has been overtaken by amphetamine production. One of the things that we have been able to do is to monitor that flow, having been in the country and working with other agencies in-country to watch the production of amphetamines as well. So there is a dividend from being there and we can provide you with the figures on that.

Senator LUDLAM—I would appreciate that. In the answer to the questions that you provided to us, you said there are about five people involved in that work. Is that still the case?

Mr Keelty—All up, that is correct.

Senator LUDLAM—There are a few things there that you have undertaken to get back to us on. Thank you. In October when we last spoke, I asked you a question about AFP surveillance of activists and infiltration of groups, in particular civil society groups working on issues such as peace, environmental protection, climate change and animal rights. You responded in writing that the AFP does not engage in inappropriate surveillance activities of groups such as that. I wondering by what criteria you gauge what is appropriate and what is inappropriate surveillance? Can you give us some examples?

Mr Keelty—The majority of the surveillance operations we do are for the investigation of an alleged criminal offence. The sorts of examples you have used are not criminal offences. We do not engage in surveillance for intelligence purposes; we engage in surveillance for evidence-gathering purposes.

Senator LUDLAM—What about, for example, groups working on climate change at the moment that are considering activities around port or rail infrastructure in the coal industry? Does your agency monitor those groups and keep files on people who are engaged in that sort of work?

Mr Keelty—As a rule, we do not unless the activities of an interest group endanger the security and safety of the Commonwealth or of a high office holder in the Commonwealth, or if indeed it engages in criminal activity. To put your mind at rest, we do not gather intelligence through surveillance on interest groups. In fact, you may be surprised to learn that we have actually worked with some of the people in those interest groups, particularly in getting an understanding of environments that we are not familiar with such as illegal logging offshore.

Senator LUDLAM—I guess I am not too surprised to hear that. Is all of that work conducted by state police departments?

Mr Keelty—I am not in a position to comment on what the state police are doing in relation to those interest groups.

Senator LUDLAM—So the Commonwealth takes no role in coordinating those activities amongst law enforcement agencies nationally?

Mr Keelty—The AFP does not, that is correct.

Senator LUDLAM—That is pretty black and white—I appreciate that. I put some questions on notice in the middle of April which are now somewhat overdue, so I will just put some of them to you now. They relate to specific cases involving terror suspects. I was seeking some information on the expenditure of your agency on specific cases, and I have a couple of those questions here. Can you go to your records on the Jack Thomas case?

Mr Colvin—I may be able to help you with that, and at the end I will also come back and answer your question about numbers at the ANSTO facility and Pine Gap. In relation to the investigation of Mr Jack Thomas, between January 2002 and February 2009, effectively a

seven-year period, the cost to the AFP was \$1.2 million. That figure does not include the direct cost of engaging the AGS, the Government Solicitor, for matters relevant to the case, totalling \$494,000.

Senator LUDLAM—So \$1.2 million plus \$494,000.

Mr Colvin—That is correct.

Senator LUDLAM—Is that file closed or is there still expenditure occurring?

Mr Colvin—That investigation has concluded.

Senator LUDLAM—The second question that I had was on the case of Dr Haneef.

Mr Colvin—In relation to Operation Rain, which was the name that the AFP had for the totality of that investigation, as at 30 December 2008 the total AFP cost of the investigation was \$8.5 million. For Dr Haneef himself, the cost of the investigation was \$4.6 million.

Senator LUDLAM—So just over \$13 million in total.

Mr Colvin—No, the \$8.5 million is a total figure. The \$4.6 million related to Dr Hanif.

Senator LUDLAM—Thank you for that. Is that file concluded now?

Mr Colvin—Yes, it is.

Senator LUDLAM—The third question I had was on the total expenditure by the AFP on Operation Halophyte. I believe that started up in January 2006.

Mr Colvin—It started in 2005, and the matter is still before the court at the moment. The cost of the investigation to date between January 2005 and April 2009 is \$5.1 million.

Senator LUDLAM—Finally, what was the expenditure by the AFP on the David Hicks case?

Mr Colvin—We cannot distinguish between the David Hicks and Mamdouh Habib cases, because both investigations were run together—I need to give you that caveat in terms of the way that the operation was conducted. The total expenditure on that operation between December 2001 and April 2009 was \$598,000. There were further direct costs in engaging the Government Solicitor which totalled \$105,000.

Senator LUDLAM—For such a significant case, that is an order of magnitude less than you spent on the Haneef case, for example.

Mr Colvin—That would be correct.

Senator LUDLAM—I have no further questions, so do you want to come back with some of the other information?

Mr Colvin—We will take on notice the actual budget appropriation, but the staffing figure as at 15 April for our officers stationed at ANSTO was 44. At the same date, 15 April, we had 50 officers stationed at Pine Gap.

Senator LUDLAM—Thanks very much for providing that.

Senator BRANDIS—Commissioner Keelty, I do not think I got an answer, because the minister decided to start talking, so let me ask you about this item on page 88 of Budget Paper No. 2. I have two specific questions that are confined to the second line item, the \$4.8 million

over four years. It is under the heading 'Africa—law and justice frameworks—Australian assistance'. I want to know, firstly, which African countries are concerned, and do those countries include Botswana, Kenya, Tanzania and Namibia? Secondly, I would like to know what particular activities the Australian Federal Police will be undertaking under this program and, as best as you can—and I appreciate that you may be able to give me only approximate figures—tell me how many officers or support personnel will be involved.

Mr Keelty—In relation to the countries that you have specifically asked about, the actual countries involved have not yet been decided. The program will include, in concert with DFAT and the African Union, a planning visit to South Africa to finalise which countries will be involved in programs providing post-graduate scholarships in forensic investigations management and forensics investigations training on personal violence-related crime, and we are doing that in partnership with Amnesty International and with the cooperation and sponsoring of a forensics laboratory managers network and workshop, in partnership with United Nations Office of Drugs and Crime.

We are also working with senior managers of the Australian and New Zealand forensic laboratories to meet once per year within Africa to assess the needs of the police agencies there to conduct criminal investigations, particularly in respect of violence-related crimes.

Senator BRANDIS—When will the selection of the countries be made?

Mr Keelty—I do not have a date, but it will be following the first visit. As you would be aware, Senator, we have an office in Pretoria and we are planning on working this out of that office in the first instance. On your other question, which I apologise I did not answer, the answer is that we have not yet determined the number of staff that will be allocated. We will not do that until we finalise the programs.

Senator BRANDIS—I do not want to press you beyond where you can reasonably go, but we are not talking about just one officer, are we? There will be several officers involved, presumably.

Mr Keelty—That is correct.

Senator BRANDIS—Thank you for that. I want to turn now to the question of people-smuggling, border protection and unlawful boat arrivals. Can I indicate that my colleague, Senator Fierravanti-Wells, as the opposition's spokesperson on immigration matters, has an interest in this area as well and, if it is all right with you, perhaps she might care to jump in and follow up any questions or lines of inquiry that I am putting.

Commissioner Keelty, I have heard you on more than one occasion in the past give evidence before this committee and Senate select committees on the involvement of the AFP in combating people-smuggling generally and unauthorised boat arrivals auspiced by people smugglers from Indonesia in particular. I wanted to give you the opportunity to start to describe, in a general way, the nature of the AFP's anti-people-smuggling activities specifically as they relate to people smugglers operating in Indonesia. To focus the question even a little more narrowly, this is component 1.1.1, Combating people smuggling. There are about eight dot points on pages 166 and 167 of the PBS.

Mr Keelty—From 1 July 2009, the AFP will receive \$48.5 million over four years to work towards the implementation of a number of initiatives. The first is the enhancement of the Indonesian National Police's ability to gather, analyse and respond to people-smuggling intelligence. On that, since September 2008, in Indonesia there have been 40 identified disruptions, comprising 887 foreign nationals suspected of being in transit or having entered Indonesia for the purpose of travelling to Australia illegally.

Senator BRANDIS—How many was that?

Mr Keelty—Eight hundred and eighty-seven.

Senator BARNETT—That figure of 887 includes the people who were seeking passage; it does not include the people smugglers themselves. Is that right?

Mr Keelty—I was about to say that there have been 18 arrests of facilitators and organisers by the Indonesian National Police since September 2008. Additional AFP support to other foreign law enforcement agencies in the region for offshore disruptions has also shown results, including the disruption on 24 April 2009 of a vessel in Malaysian waters containing 36 passengers allegedly destined for Australia. Going back to your original question, Senator, there is additional enhancement of the Indonesian National Police capability through country operations, improving their ability across the archipelago; the establishment of an AFP post in Sri Lanka; enhancement of the AFP's people-smuggling strike team capability to combat maritime people-smuggling ventures; the establishment of dedicated people-smuggling liaison and intelligence officers in Asia; and the expansion—

Senator BRANDIS—Pausing there, how many will there be in Asia and at which places?

Mr Keelty—Deputy Commissioner Negus has more details on that. Finally, there is the expansion of the United Nations Office on Drugs and Crime's current computer based training facilities in Indonesia and Australia.

Mr Negus—There are additional resources going to Thailand, Malaysia and Indonesia. There will be intelligence officers to work with our existing people on the ground there to try and combat people smuggling. As the Commissioner mentioned, we have a post opening as well in Sri Lanka, where we do not have a presence currently. So those are the four major countries.

Senator BRANDIS—In each of those four countries, Thailand, Malaysia, Indonesia and Sri Lanka, is there going to be just one post or is there going to be more than one post in any of those countries?

Mr Negus—We already have posts in Thailand, Malaysia and Indonesia, but there will—

Senator BRANDIS—Just one?

Mr Negus—In Indonesia, for instance, we have more than 20 people doing counterterrorism and a range of other things. There will be two additional staff going into Indonesia, one into Thailand and one into Malaysia, as well as two into Sri Lanka.

Senator BRANDIS—So the number of staff placed in these four countries is going to increase by six.

Mr Negus—That is right. That is just off the top of my head, and I would like to confirm those numbers.

Senator BRANDIS—Yes, sure.

Mr Negus—But that is very close to where it is. We also have an additional resource going into Pakistan as well to be concentrating on people smuggling.

Senator BRANDIS—When you say ‘an additional resource’, do you mean an intelligence capability?

Mr Negus—That is right—an intelligence officer going into Pakistan.

Senator BRANDIS—All right. Thank you. Commissioner Keelty, have you finished what you wanted to say in response to my general question?

Mr Keelty—Yes.

Senator BRANDIS—All right. Thank you. As you have told the Senate on various occasions before, one of the most important aspects of dealing with people-smuggling operations is interdiction activity in cooperation with the Indonesian policing authorities. Without going further than you can in relation to operational matters, what is the current state of Australia’s involvement in interdiction activities in Indonesia? I am particularly concerned to know whether what the PBS describes as ‘enhancing Indonesia’s surveillance and technical capability to combat people smuggling’ means that there are functions in relation to interdiction activities which had previously been undertaken by Australian officers and which have more recently been transferred into the hands of Indonesian officers.

Mr Keelty—It has been a combination of a number of things. Firstly, yes, there have been skills development opportunities for the Indonesian National Police. They in fact have task forces that are occupied in identifying and arresting offenders—and I gave you some of the figures for the arrests. Additionally, the people smugglers have moved their operations across the archipelago. So the capability of the Indonesian National Police has been stretched in this regard, and we have needed to help them develop the skills of more people. That is really a geographically issue. As we have become successful in working with the Indonesians in one part of the archipelago, it has displaced the crime to other parts of the archipelago.

Senator BRANDIS—It is still the case, though, is it not, that the place of departure for the people smugglers’ vessels is the southern shores of Sumatra and the southern shores of the archipelago?

Mr Keelty—That is right, but the southern shores of the archipelago is a significant piece of geography, and they have moved to some of those more remote areas.

Senator BRANDIS—As points of departure?

Mr Keelty—That is correct.

Senator BRANDIS—That is interesting. Is this a development which you have picked up through your intelligence networks and your on-the-ground policing operations?

Mr Keelty—Some of it is through the interview of persons who have arrived in Australia, to assess where their points of departure have been. Other intelligence has come from the

other Australian agencies that we are working with in this regard and also our work within Indonesia.

Senator BRANDIS—Coming back to my question: does the ‘enhancement of Indonesia’s surveillance and technical capability to combat people smuggling’ through the AFP’s programs mean that more responsibility for the interdiction activities is being undertaken by Indonesian officers than was the case a few years ago?

Mr Keelty—That would be correct—bearing in mind that the Indonesians see this as a serious crime for their own country, because they have themselves now become a victim of this crime type, with a large number of people illegally entering their country awaiting transshipment to other parts of the world. One of the things that we have worked out with the Indonesians is working together with them further up the Malay Peninsula and further west to other points of departure—hence the part of the program addressing countries such as Sri Lanka.

Senator BRANDIS—When you say ‘people coming into Indonesia awaiting transshipment to other parts of the world’, the large share of those people are going to Indonesia to embark to Australia, are they not? It is not as if they are going to New Guinea, Borneo or somewhere like that, is it?

Mr Keelty—The majority would be planning on coming to Australia. Obviously there have been experiences in Timor-Leste, where groups have come across and done an island hop. Also, Papua New Guinea has had a number of experiences with this, as has New Zealand. But you are quite right in what you are saying: the majority who go there with an idea of going south are coming here.

Senator BRANDIS—And, by their own terms, these people who attempt to unlawfully enter Australia only want to be in Indonesia temporarily. It is not a destination of resettlement for them; it is for them a destination of embarkation for other places, in particular, Australia.

Mr Keelty—That is correct, and the figures bear that out.

Senator BRANDIS—Sure. So, ultimately, it is an Australian problem. It is obviously in an immediate way an Indonesian problem too, but it is Australia that most of these people have in their sights.

Mr Keelty—What we have tried to do is to work with the Indonesians on the basis that it is not an Australia-only problem. It is a problem for the region because the point of origin for the majority of these people is the Middle East.

Senator BRANDIS—Indeed. Are you able to share with the committee your understanding of—and I appreciate there will be a range here—what the current price charged by the people smugglers is to these people to facilitate their unlawful passage to Australia?

Mr Keelty—I do not have the figure myself but, in customary practice, I will look to my left and see if someone else does.

Mr Negus—The price that is generally being charged is between US\$5,000 and US\$10,000. Obviously there are variations, but that is the ballpark.

Senator BRANDIS—All right. Has that moved much over the last few years?

Mr Negus—It has been pretty consistent within that range.

Senator BRANDIS—I remember when the Senate did an inquiry some years ago—I think it might have been the ‘children overboard’ inquiry or one of those—and that was the figure being quoted then too. These people come, as Commissioner Keelty has said, largely from the Middle East. They arrive in Indonesia by air, typically, do they?

Mr Negus—It is difficult to say ‘typically’ because there are a range of different mechanisms by which these people could come. Some of them do certainly come by air, yes.

Senator BRANDIS—Do most of them?

Mr Negus—Again, it is difficult to give a key answer to that which would be accurate because we are talking about literally hundreds of different people.

Senator BRANDIS—Let us go directly to that, Deputy Commissioner Negus. Allowing for the fact that you will only be able to give very, very rough numbers, what is your assessment of the approximate number—and I think the rather innocuous word used before was ‘facilitators’—of individual criminal entrepreneurs engaged in this practice in Indonesia? Is it thousands, hundreds, dozens? Do you have an estimate of that?

Mr Negus—I would not say it is thousands, but again that goes to fairly significant operational detail about who we might be targeting or who we might not so I would not like to answer that.

Senator BRANDIS—Sure, but it would be fewer than thousands?

Mr Negus—I would imagine so, yes.

Senator BRANDIS—I am going to guess that you probably mean hundreds rather than dozens. Allowing for the fact that there is probably no such thing as a typical people-smuggling operation, nevertheless, there would be certain common characteristics, I dare say. The people who come from the Middle East are accommodated somewhere while they are waiting to be taken by boat to Australia, aren’t they?

Mr Negus—They are, yes.

Senator BRANDIS—Is that in hotels or in some other form of more domestic accommodation? What is the usual method?

Mr Negus—Again, it is very difficult to give a usual method. The Commissioner mentioned the number of people being interdicted, but of the 749 passengers who have arrived in Australia there were also 887 foreign nationals apprehended in Indonesia. So we are talking about well in excess of 1,500 people in the last six or seven months. They come by a variety of means, they stay in a variety of different locations and we have seen, over time, that the methods that the people smugglers use have changed and adapted to work contrary to whatever law enforcement practices might be put in place.

Senator BRANDIS—They are trying to stay ahead of the cops.

Mr Negus—They do. As people are apprehended the people smugglers learn of particular methods of interdiction used by the Indonesians and ourselves and they try to vary their tactics accordingly.

Senator BRANDIS—Mr Keelty said that 887 were apprehended in Indonesia, these are in operations involving the AFP, I take it?

Mr Negus—Some of them, yes.

Senator BRANDIS—Not all of them involve the AFP.

Mr Negus—No, the Indonesians do much of this work across the archipelago. We are not in all locations.

Senator BRANDIS—Can I come back to you then, Mr Keelty. Perhaps I misunderstood something you said. That 887 figure you quoted, was that the number of people on your information in total who had been apprehended, including those with whose apprehension the AFP had no involvement, or was it only 887 apprehended in operations involving the AFP?

Mr Keelty—It is since September 2008 and it is 887 some of which we have had involvement with and some of which we have not. These are figures that the joint task force in Indonesia is producing.

Senator BRANDIS—I see. So that includes cases where Australia had nothing to do with it at all. It was entirely an Indonesian operation.

Mr Keelty—That is correct. There is a joint task force in Jakarta and the operations obviously because they are within Indonesia are dictated by the Indonesian National Police. Some of them involve us and some of them do not.

Senator BRANDIS—All right. I will just stay on that for a moment. How many Australian AFP personnel are at the moment deployed in the joint task force?

Mr Keelty—I am sorry, I do not have the figure. I have had it in the past, but I do not have it here now. We will see if we can get it. It is not a large number—less than half-a-dozen.

Senator BRANDIS—I would appreciate it if one of your assistants here might try and confirm that figure for me straightaway because we will be a little while yet and I would not like your evidence to finish without being able to firm up that figure. How many Indonesian personnel are involved in the joint task force at the moment?

Mr Keelty—Again, I would have to get that figure. With respect to the joint task force for the Indonesians, there is a core group but there are also the resources of the Indonesian National Police that extend beyond the core group, so there is quite a large Indonesian commitment to this.

Senator BRANDIS—Just like policing in Australia, the AFP has relationships with other police agencies and police forces. I understand that it would be similar I guess in Indonesia too.

Mr Keelty—That is correct.

Senator BRANDIS—When you say the Australian Federal Police personnel deployed in the joint task force are less than six does that include or exclude AFP officers on the ground in Indonesia engaged in the investigation of people smuggling and in the interdiction activities?

Mr Keelty—I am not sure I understood the question, sorry.

Senator BRANDIS—I will have another go at it. You have told me, as I understood you, that Australia's involvement with Indonesia is through the joint task force. You have told me that the Australian AFP personnel participating in the joint task force is a small number less than six. Does that figure of less than six include or is it in addition to AFP officers on the ground working in Indonesia investigating people-smuggling activities and engaged in interdiction activities?

Mr Negus—We talked about less than half-a-dozen people being in Indonesia assisting the Indonesian National Police. It is quite important that we understand the AFP do not perform operational roles in Indonesia. They perform mentoring and training roles and those sorts of things. There is a people-smuggling task force which operates from Australia. There are 10 AFP officers in that and five from DIAC and the Border Protection Command, so it is a combined group. That ratio will be changing in the next little while, with more Border Protection Command people coming in and replacing those from DIAC. We also have had over the last several months between 10 and 14 people on Christmas Island who are debriefing these passengers as they arrive. So there are a significant number of people working in people smuggling. You would have seen the arrests last week in Shepparton, where we had a team from our Melbourne office, combined with the people-smuggling task force, to effect those search warrants. Again, that is more federal police working on people smuggling outside of the broad task force. Going back to your original question, on the ground in Indonesia there is a surge capacity. We have in excess of 20 people working in Indonesia, mainly on counterterrorism and other transnational crime issues.

Senator BRANDIS—Did you say 'more than 20' or 'about 20'?

Mr Negus—About 20. It goes up to about 25 and down to about 18, depending on operational contingencies. All of those people assist at various times as the need arises.

Senator BRANDIS—Let me make sure I understand what you are saying to me: that Australian officers do not engage in direct law enforcement or investigation of people smuggling in Indonesia, but through the joint task force they coordinate activities and presumably—and I am surmising here—share intelligence with the Indonesian authorities; that there is a people-smuggling task force in Australia of 10 officers; that there are, in addition to that, 10 to 14 officers who engage in debriefing asylum seekers on Christmas Island; that, in addition to that, there are the domestic Australian operations of the Australian Federal Police, which include tracking down information concerning people-smuggling networks; and that, going back to Indonesia, there are, in addition to that, 18 to 25 officers working in Indonesia, though mainly on counterterrorism.

Mr Negus—Counterterrorism and transnational crime.

Senator BRANDIS—Again not trespassing into operational matters to the extent to which you feel uncomfortable doing so, are those 18 to 25 officers largely an intelligence-gathering operation?

Mr Negus—They are liaison and intelligence gathering. They perform some training and mentoring roles as well.

Senator BRANDIS—Liaison, intelligence gathering and training.

Mr Negus—As is the case with all of our overseas posts, none of the people working in those countries have the powers of a police officer in those countries. They are totally reliant on the good nature and assistance of the local police.

Senator BRANDIS—Do the 18 to 25 officers you have described include the fewer than six assigned to the joint task force?

Mr Negus—Yes, they do.

Senator BRANDIS—So there is double-counting there, and the fewer than six of which Commissioner Keelty has spoken are the only officers among that group of 18 to 25 whose principal or sole function is dealing with people smuggling.

Mr Negus—That is right, but we regularly send people to Indonesia on particular investigations to support those people. If there happened to be a spike in activity or a requirement, we would send officers to support them.

Senator BRANDIS—In any event, I should not count the 18 to 25 because they have already been accounted for in the fewer than six that Commissioner Keelty mentioned—is that right?

Mr Negus—That is right, but it does provide a surge capacity.

Senator BRANDIS—But there can be an ad hoc augmentation of that capability. I understand that.

Mr Negus—Yes.

Senator FIERRAVANTI-WELLS—Following on from that, the AFP have been on the ground for quite some time in Indonesia and those operational activities have increased significantly since September. Is that a fair summary of the situation last year?

Mr Keelty—Yes.

Senator FIERRAVANTI-WELLS—It is appropriate therefore to say that it has been as a consequence of the change in policy and direction of this government that has given rise to the increased AFP activities in Indonesia?

Mr Keelty—I could not say that.

Senator FIERRAVANTI-WELLS—In April we saw newspaper reports about the AFP repeatedly warning the government that its softening of border protection laws would encourage people-smuggling. Could you comment on those reports and advise the committee if you have provided any reports and, if so, when did you first provide those reports?

Mr Keelty—First and foremost, they are newspaper reports; they are not accurate reports. Secondly, it is not appropriate for me, as has been the tradition in this committee, to discuss what I discuss with ministers in relation to operational activity. Thirdly, there are a number of agencies who provide intelligence from time to time and assessments of the situation in relation to certain crime types and there is no report that I have authored to the minister or to any minister in this government to describe in any way, shape or form the impact of their policy on people-smuggling.

Senator BRANDIS—Nevertheless, for all the reasons that you and Deputy Commissioner Negus have been describing to the committee for the last 20 minutes or so, the Australian Federal Police in its operations in Indonesia, in particular through the joint task force, does in fact gather a very considerable body of information concerning the activities of people-smugglers.

Mr Keelty—That is correct.

Senator BRANDIS—Part of your function, a core function—it appears in fact in the description in the PBS—is intelligent gathering concerning people-smuggling.

Mr Keelty—That is correct.

Senator BRANDIS—In gathering that intelligence—and you have been doing this for some years now—you would inevitably become aware of changes in people-smuggler behaviour, as Deputy Commissioner Negus told us a few moments ago, and you would be aware of trends as to the type of activity in which people-smugglers are engaged and trends up or down in relation to the numbers.

Mr Keelty—That is correct.

Senator BRANDIS—You would have a view about the factors which caused people-smuggling activity to change and you would have a view about the factors which caused an increase or a falling away in the aggregate amount of people-smuggling activity across time?

Mr Keelty—That is correct.

Senator BRANDIS—The views that you or your officers had would presumably be shared with and indeed developed, I dare say, in collaboration with the Indonesian authorities.

Mr Keelty—That is correct.

Senator BRANDIS—As you have told us, or perhaps it was Deputy Commissioner Negus who told us, one of the main roles of this joint task force is to share intelligence and, as I think Deputy Commissioner Negus told us, the Indonesian component of the joint task force is much greater than the Australian component of the joint task force.

Mr Keelty—That is correct.

Senator BRANDIS—So, being highly skilled police officers, your officers in consultation with their Indonesian collaborators seek to identify trends in the commission of this crime and seek to identify causes of this crime.

Mr Keelty—That is correct.

Senator BRANDIS—The views that you arrive at and share with your Indonesian collaborators you presumably on occasion commit to writing?

Mr Keelty—Certainly, in relation to the individuals who are suspected of being the perpetrators, the routes that are being used and the numbers that are potentially being used.

Senator BRANDIS—Yes. And one thing you do that the Indonesians do not do, I daresay, is debrief unlawful asylum seekers on Christmas Island. When the 10 to 14 officers of the AFP are engaged in debriefing on Christmas Island they, I daresay, act without Indonesian police officers at their elbow—is that right?

Mr Keelty—That is right.

Senator BRANDIS—I daresay that the debriefing of those 774 people has yielded much useful information concerning trends and causes in people smuggling and some of that is presumably reported back through the joint task force to your Indonesian collaborators as an aspect of the intelligence-sharing function.

Mr Keelty—That is correct.

Senator BRANDIS—Now from operational activities on the ground, which I gather from what you have told me is the province of the Indonesian officers, and debriefing of unlawful asylum seekers, which you have just told me is the province of Australian officers on Christmas Island, and from other sources as well including, as you have said, information from other agencies as much information about both trends in this crime and causes of this crime is assembled and pooled and shared with your Indonesian collaborators.

Mr Keelty—That is correct.

Senator BRANDIS—Presumably that is done in discussions and in documentary form.

Mr Keelty—That is correct.

Senator BRANDIS—Right. By the documents of which I am speaking I do not have in mind reports to government. What I have in mind is documents answering the description I have just given you and which you have affirmed, which are working police documents. Do you understand me?

Mr Keelty—Yes.

Senator BRANDIS—All right. These documents of this kind would be prepared from time to time?

Mr Keelty—That is correct.

Senator BRANDIS—Among those documents would the AFP prepare documents which seek to forecast future trends in the commission of this crime?

Mr Keelty—Not to my knowledge. We have not done that. With regard to your forensic examination of the individual components of what goes on here, the debriefing of people on Christmas Island is an intelligence gathering process in part. The main purpose of that exercise is to gather admissible evidence against the perpetrators, whether they be charged with offences in Australia, whether we can assist the Indonesians in relation to offences within Indonesia or indeed whether we can assist other foreign countries with the evidence gathering procedures for this criminal enterprise.

Senator BRANDIS—I understand that an important part of the task when you debrief offenders is with a view to preparing the prosecution brief in the event that the prosecutorial authorities decided to prosecute the offence.

Mr Keelty—That is correct, but the intelligence dividend I talked about is also to initiate inquiries and investigations as a prevention measure.

Senator BRANDIS—Exactly. That is precisely where I want to go. It is that aspect, not the prosecution, the ex post facto aspect of it, of preparing a prosecution brief in relation to events

that have already happened that I am so concerned about. What I am interested in knowing about is the aspect that you have just identified yourself; that is, the intelligence aspect whereby you and your Indonesian collaborators better inform yourselves of the causes of this crime so as to develop more effective preventive strategies—your word ‘preventive’ strategies. You have told me that that information and those views are shared with the Indonesians—they are pooled—and sometimes they are reduced to documentary form. A document of that kind—and you have told me that such documents are prepared from time to time; I am not going to ask you to put a number on it—was prepared in about September or October last year, wasn’t it?

Mr Keelty—I do not know.

Senator BRANDIS—Deputy Commissioner Negus, you might know. Would it help if I identified the document? It is a document entitled ‘Strategic Forecast for Transnational Criminal Trends and Threats’, a document, I am advised, which is commonly referred to in the AFP as a strategic intelligence report. Are you familiar with that document?

Mr Keelty—No, I am not.

Senator BRANDIS—Deputy Commissioner Negus?

Mr Negus—No, I am not.

Senator BRANDIS—Are you familiar that there are documents relating to matters such as people-smuggling generated within the AFP that, within the AFP, are commonly called strategic intelligence reports—that that is a shorthand description of a category of document?

Senator Ludwig—I might interrupt here briefly. I understand that you are entitled to ask a range of questions. I am concerned about one aspect only—that is, the instance of commenting on intelligence. It has been a long-standing bipartisan approach by the Australian government, both Liberal and Labor, to not comment on intelligence briefings. I am not sure if you are heading towards intelligence briefings but I thought it was worthwhile putting that on the record at this point. That is why—

Senator BRANDIS—Well, I am not—

Senator Ludwig—I have not quite finished. The Australian government does not comment on intelligence matters. That was a matter that Mr Ruddock raised back in October 2005 in *Hansard*. The government has not commented publicly on matters of intelligence. That was a matter raised by the Defence minister in September 2006, and I am certain that in opposition the same response was provided to me to questions I asked of the Australian Federal Police. I just wanted to ensure that we were clear about those matters.

Senator BRANDIS—Thank you, Minister. Your note of caution is unnecessary. The opposition will not be pursuing any inappropriate matters, and if any of the opposition senators err in that regard I am sure the commissioner is perfectly well able to indicate that that is an intelligence matter.

Senator Ludwig—Thank you, Senator Brandis.

Senator BRANDIS—I was merely seeking to identify whether a document with a particular name, to the knowledge of these officers, exists.

Mr Keelty—Madam Chair, I wonder if I could ask you a question. Obviously, Senator Brandis is referring to a document. I think, under the rules of this committee—it is not a court of law—I am entitled to refer to the document if he is referring to it.

CHAIR—Are you aware of the document to which he is referring?

Mr Keelty—I cannot verify that document unless somebody gives me a copy of the document. We could cut short this whole discussion, I am sure.

CHAIR—Are we able to have that tabled?

Senator BRANDIS—No.

CHAIR—It is going to be very difficult for the witness to answer your questions.

Senator BRANDIS—Taking the questions one at a time might be the best way to do this.

Senator Ludwig—Now that we have raised this issue, Chair, can I say it is always a challenge but what we usually do, if we are going to refer to a particular document, is provide that document to the witness. In nearly all cases I can recall when in opposition it was certainly requested of me to provide the document so that the witness had an opportunity of looking at the document to verify whether it was a document they could comment on, whether it was a document they had created or whether it was a document they had knowledge of. Not having that does provide difficulty for the witness.

CHAIR—Senator Brandis, to help us pursue this, is it a document that you allege has been written by the Australian Federal Police or for the Australian Federal Police?

Senator BRANDIS—I am not making any allegations at all. I am asking questions and, so far, what I have asked the witnesses is: were they aware whether a particular document with a particular title was prepared in or about September or October last year?

CHAIR—As I understand it, the answer was: not that he was aware of.

Senator BRANDIS—That was the answer. Could you please, Commissioner Keelty, take that question on notice. Let me broaden the question so that you can appropriately take it on notice.

Senator Ludwig—That was what I was going to suggest. It may be worthwhile.

Senator BRANDIS—My question, which I invite you to take on notice, is whether a document entitled ‘Strategic forecast for transnational criminal trends and threats’, commonly referred to in the AFP as a strategic intelligence report, was prepared by officers of the AFP in relation to Indonesian based people-smuggling in about September or October 2008.

Mr Keelty—I will take that on notice.

Senator BRANDIS—Would you also please take this question on notice. Did that document contain these words: ‘Reporting indicates that people smugglers will market recent changes in Australia’s immigration policy to entice potential illegal immigrants. This may cause a rise in the number of attempted arrivals’?

Mr Keelty—No.

Senator BRANDIS—Sorry?

Mr Keelty—You asked me whether I would take this on notice and I have said no.

Senator BRANDIS—Will you answer the question?

Mr Keelty—The question was whether I would be prepared to take on notice the question you just asked, and my answer to that is no. It is an intelligence report and, under the conventions of this committee, we do not disclose the contents of intelligence reports to the committee.

CHAIR—Senator Brandis—

Senator BRANDIS—Can I address that please, Madam Chair?

CHAIR—You can in a moment but, as chair, I want to clarify Commissioner Keelty's response, which is that at this stage, Commissioner Keelty, you are not aware that such a report exists. You have given us an indication that you will ascertain whether that reported exists.

Mr Keelty—That is correct.

CHAIR—If, in fact, that report does exist you are then suggesting it is probably an intelligence report, the contents of which you are not able to reveal—is that correct?

Mr Keelty—That is correct.

Senator BRANDIS—Commissioner Keelty, I put it to you that an AFP document generated in September or October last year in relation to Indonesian based people-smuggling did contain those words.

Mr Keelty—I cannot answer that question, Madam Chair, on the basis that I have just indicated.

Senator BRANDIS—That is fine—I feel obliged to put it to you, and I respect that you feel unable to respond. Just to complete my line of questioning here; can you confirm that an AFP generated document, produced in September/October last year, contained these words: 'The introduction of additional classes of Australian working visas is likely to provide more opportunities for visitors to overstay.'

Mr Keelty—I cannot comment on that.

Senator BRANDIS—That is fine, thank you.

CHAIR—I have a follow up question in relation to what Senator Brandis has asked. If you are able to get back to this committee with confirmation that such a document exists, would it not then be a logical conclusion for you or your officers to come to that such a document had been leaked by somebody in your organisation to members of the opposition?

Mr Keelty—I do not know whether the document exists and, if such a document exists, I would wonder why it would contain such comments that really do not go to the heart of the crime that is being investigated. In any event, it would depend on how widely that document was shared. There are a number of agencies with whom we are working on this issue. I would not say straight away that it must have come from the AFP—if such a document exists in the first place.

Because I have been denied the opportunity to see what Senator Brandis is referring to we have gone through this questioning process for nearly ¾ hour now. I do not know if he is referring to a newspaper report or whether he is referring to an actual report, so I am in a very awkward position here.

CHAIR—Is it usual that documents that contain intelligence reports are not kept confidential?

Mr Keelty—If it is an intelligence report it would have a caveat on it, but it would depend on other material in the document to determine the extent of the caveat. They range from ‘in-confidence’ to ‘secret’.

CHAIR—What are the consequences or penalties for such actions?

Mr Keelty—It would be an unlawful disclosure, which is an offence under the Crimes Act.

Senator Ludwig—As I indicated earlier, there is always difficulty when it is ‘if the document should or should not exist’. It is a longstanding practice not to comment on intelligence matters, full stop. That is the practice that has been adopted. It does seem to me that we are now falling into that error, either inadvertently or deliberately, by even referring to a document that may or may not exist. That concerns me. If it is about the germane issue, then perhaps we could have questions about that. But if we are going to have speculation, then I think the question has been taken on notice by the commissioner.

Senator BRANDIS—Let me just clarify: in relation to the last two questions, your position was that you would not take the question on notice because, in any event, you would feel unable to answer it, and you raised the objection to answering it in the terms in which you articulated that objection. I understand that perfectly—that is where you stand.

Mr Keelty—That is correct.

Senator BRANDIS—You would have seen a report by the journalists Steve Lewis and Malcolm Farr in the Sydney *Daily Telegraph* newspaper on 18 April this year, under the headline on page one ‘PM was warned’ and the secondary headline ‘Law changes made us magnet for refugees’, in which those journalists assert:

AUSTRALIAN Federal Police warned Prime Minister Kevin Rudd just weeks ago his border protection laws were making the country a magnet for smuggling.

The warning came in secret intelligence briefings prepared by the AFP that were delivered to senior Government ministers.

The Daily Telegraph understands the AFP also expressed reservations last year as the Rudd Government wound back John Howard’s tougher approach.

Allowing for the fact that briefings to ministers are not something on which you feel able to comment, do you dispute the accuracy of that report?

Senator Ludwig—Perhaps the witness could have a copy of that document. Whilst that is being done, the import of the question is about strong border security. This government is committed to strong border protection.

Senator BRANDIS—Are we going to pause for another message from our sponsor?

Senator Ludwig—Let me have my say. I do not interrupt you very much, and you have had significant time to question in respect of this. The import of the question goes to this government's border protection. Our border protection and people-smuggling policies are tough and strong. We have a strong, comprehensive approach to people smuggling and unauthorised boat arrivals. We have retained the excision of offshore islands from our migration zone, we have retained mandatory detention of all unauthorised boat arrivals, we have retained offshore processing on Christmas Island for all unauthorised boat arrivals and those that do not qualify for protection are removed from Australia. The government also provides a humanitarian response to refugees. This government has provided \$654 million in border security measures to counter people smuggling. The budget already has more boats patrolling our northern waters and has more spending than that of the previous government on Customs surveillance.

In respect of the broader question you raised earlier about some of the pull factors from overseas, the advice is that there has been a significant increase in refugee flows across the world, due to a number of conflicts, including those in Afghanistan and Somalia, as well as ongoing instability in Sri Lanka and Pakistan. Since 2006 the global refugee population, as recognised under the UNHCR mandate, has increased almost 30 per cent to 11.4 million people. In its latest global survey, which was in June 2008, UNHCR estimated that at the end of 2007 there were 51 million internally displaced persons.

Senator BRANDIS—Is the commercial break over? Can I go back to my questions please?

CHAIR—Minister, have you finished?

Senator Ludwig—Thank you, Chair.

CHAIR—Senator Brandis has the call.

Senator BRANDIS—I know Senator Fierravanti-Wells wants to pursue this a bit further, but let me just re-put the question I asked you before the commercial break: are you in a position to dispute the assertion which I have quoted to you in that report?

Mr Keelty—No.

Senator BRANDIS—Thank you.

Senator FIERRAVANTI-WELLS—After you consider the questions that you have agreed to take on notice, I would appreciate it if you could go back and, if required, revisit the answer that you previously gave me, saying that they were simply unsubstantiated media reports. After the report that appeared in the newspaper, there were a series of reports—indeed, there have been since about April—making reference to the federal government receiving reports from the AFP that warned that the changes in border security policies were soft and would increase the number of illegal asylum seekers. My concern is that those reports have not been denied in the press. Notwithstanding the number of them that have appeared, I have not been able to find anything that basically says, 'No, these reports don't exist.' Is that what you are actually telling us today—that those reports do not exist? Is that, in a nutshell, what you are saying?

Mr Keelty—What I am saying is a number of things. Firstly, it is not the job of the AFP to produce intelligence reports to government. As I said in answer to questions earlier, the role of the AFP in investigating people-smuggling, when they are creating and forming intelligence reports, is to inform the investigation process against the criminal enterprise for prevention purposes. It is not to inform the government. That is a role performed by other intelligence agencies and, in any event, I would not be able to disclose to this committee the contents of intelligence reports created by the AFP for the purposes of the criminal investigations.

Senator FIERRAVANTI-WELLS—Can I then ask the question: after those reports appeared in the newspaper did you make any inquiries about what potentially they were referring to?

Mr Keelty—The unfortunate problem with newspaper reporting is that it would be a full-time occupation for me and my staff to chase down every individual allegation that is made in the newspaper. I know this is wrong; we do not create intelligence reports to report to government.

Senator FIERRAVANTI-WELLS—So there were glaring headlines in the papers but you are telling me you made absolutely no inquiries after those front-page reports alleging that the Prime Minister had been warned? Within the AFP, you made no inquiries to ascertain the veracity or otherwise of these glaring front-page reports?

Mr Keelty—That is correct.

Senator FIERRAVANTI-WELLS—I cannot believe that you are actually saying that.

Mr Keelty—It is not our role to investigate newspaper allegations. We know what the intelligence picture is; we are working on it. We know where the arrests are being made; we are part of that enterprise. We are contributing to the whole-of-government response to this particular problem. If we go about trying to investigate newspaper allegations it is a deflection from what we are trying to achieve here, which is the investigation of the criminal enterprise. We are not interested in the politics of this, and nor should we be.

Senator FIERRAVANTI-WELLS—Perhaps I might ask the question in another way. It is clear from the program 1.1 deliverables that Senator Brandis referred you to and the eight or nine points under ‘Combating people smuggling’ that appear on pages 166 to 167 that there has been an increase in the need for work by the AFP in this area. Indeed, we see phrases such as ‘additional enhancement’, ‘expansion of AFP capability’ and ‘enhancement of Indonesian National Police capability’. That clearly indicates to anybody reading it that the AFP must have formed a view which required it to increase—or at least that it had the basis for increasing—these activities. What is the basis for that expansion? There must have been a need for you to have an increase in funding.

Mr Keelty—That is a position that the government formed on advice, not from the AFP in isolation but from a number of agencies, about the problem of people-smuggling. It is not an Australian problem; it is a global problem.

Senator FIERRAVANTI-WELLS—In other words, you did provide advice to government which subsequently led to the sorts of increases in resources that Senator Brandis was asking about earlier?

Senator Ludwig—It has been a longstanding practice not to comment on briefings or advice to government. What I said earlier—and I thought you were in the room when I said it—was that there has been a significant increase in refugee flows across the world due to a number of conflicts: Afghanistan and Somalia as well as ongoing instability in Pakistan and Sri Lanka. There has been an increase, recognised under the UNHCR mandate, of almost 30 per cent in global refugee population, to 11.4 million people. The journeys of some who have ended up on our shores have taken months or years; this is not an issue that has suddenly arisen in the last couple of months. In fact some of the reports that we have received from these people are that they left to come to Australia when Mr Howard was the Prime Minister.

This government is working with regional partners right across South-East Asia and Asia about this global problem. We are addressing it. That is why we have committed funding of \$654 million to a whole of government strategy to combat people smuggling and address the problem of unauthorised boat arrivals. It is of concern to this government. We are taking action. We have, as we have indicated, increased and extended our sea and aerial surveillance capability, including two additional surveillance aircraft. That is outside of the remit of the AFP. We have strengthened Australia's engagement with our regional partners, and some of that you have heard in evidence today from the Australian Federal Police. We have also strengthened our legal and prosecution capacity and enhanced regional capacity on people-smuggling laws. This is a whole of government program. It is not an individual AFP issue. And as to advice to government, or intelligence briefings for that matter, as I have stated a number of times it is a position adopted by government, Labor and Liberal, that we do not comment on those matters. We do recognise that there is a need to provide the funding to address this issue. Australian authorities have worked closely with regional counterparts to prevent people-smuggling operations at their source as well. This is an issue that we do take seriously and we are addressing.

Senator FIERRAVANTI-WELLS—Thank you, Minister. Clearly you are not across the changes that have occurred in the DIAC portfolio where there have been major changes across 26 program initiatives, different to what the Howard government was doing. That happened in August and I think that was really the beginning of the signal, but I will not go there. I will end my questions there.

Mr Negus—Chair, just before we move off people smuggling, I want to correct something that was said a short time ago. The commissioner mentioned there were less than six officers working in Indonesia. The advice has come through—and I will just go through this quickly—that there are 21 AFP officers currently in country in Indonesia, of which five are dedicated liaison officers working on people smuggling; the remaining 16 work on the broad range of transnational crime and counterterrorism we talked about. As I mentioned, though, there are, at present, four additional officers from Australia based in Indonesia. That is just to give you the complete picture of what the current status is.

Mr Keelty—So the 'less than six' was five.

CHAIR—Thank you.

Senator BARNETT—My question relates to your answer to a question on notice from me, No. 105, regarding the impact of the global financial crisis on the AFP's operations. In that

answer you say that ‘A more difficult economic environment has the potential to impact the following crime types and challenges’ and then you list the six crime types. The sixth one is ‘displacement of populations leading to increase in people smuggling.’ Can you provide the reasons for that assessment?

Mr Keelty—In answer to the question that was asked, which was, ‘What measures have the AFP undertaken to position ourselves to respond to security challenges facing Australia,’ obviously one of the predicted outcomes of the global financial crisis is that other economies may suffer, and that may cause people to have to move from where they are. It is just a prediction which is in other public fora. It is a fairly public prediction.

Senator BARNETT—And it is a very understandable thing. As the economy tightens not only here but certainly in other nations, including in the Third World, it becomes very difficult. But that is your rationale for stating that there will be a potential increase in people smuggling as the economic times get tough and the recession bites not just here but around the globe.

Mr Keelty—It was in answer to your specific question, which was: what are we looking at? As was stated in the answer, there is potential for this. It has been publicly commented upon and it is one of the things that we would be considering.

Senator BARNETT—But it is an expectation that you have. You listed six areas of crime types and challenges:

A more difficult economic environment has the potential to impact the following crime types and challenges:

- corporate fraud ...
- opportunistic theft;
- identity crime;
- intellectual property crime ...
- the requirement for peace and stability operations and assistance programs offshore depending on the impacts on vulnerable states—

and then you talk about the increase in people smuggling.

Mr Keelty—I also placed a caveat on that list by saying there is a degree of uncertainty as to how this will play out, so it was a speculative list.

Senator BARNETT—Of course there is, but this is your best estimate, based on the financial crisis that the globe is currently in. If that continues, would you estimate that the potential increase will also loom large?

Mr Keelty—It was just speculation in answer to that specific question. We will wait and see what the evidence is.

Senator BARNETT—But you are an expert, so you cannot say it is speculation. This is an estimate; it is your best guess. You have the expertise, you can see what is happening, you are seeing the trends and you have said that the ‘displacement of populations leading to increase in people smuggling’ is one of the key areas that you will need to focus on in the months and years ahead.

Mr Keelty—Potentially, depending on how the economic crisis plays out. There are a lot of caveats around this, but it is potentially something that could occur.

Senator BARNETT—So if the economic crisis continues to play out the way it has then you would envisage that this will remain a key focus for the AFP.

Mr Keelty—People smuggling for the foreseeable future will remain a key focus for the AFP. That is why we sought additional funding—along with other government agencies, as the minister said.

Senator BARNETT—Thank you.

Senator XENOPHON—I would like to take you to the issue of airport security and, in particular, the leaking of a report prepared by Customs officer Allan Kessing that was reported in the *Australian* newspaper on 31 May 2005 and the subsequent report by Sir John Wheeler of September 2005 commissioned by the then government. There were a number of recommendations contained in that report. The first recommendation related to having a thorough examination of the legislation, the regulations and the sharing of information amongst government agencies and between government and the private sector. References were made to the interface between the AFP, ASIO, the Protective Service, private security firms and state police. What is your understanding of what has occurred there and what involvement has the AFP had in relation to dealing with the key recommendations of the Wheeler review?

Mr Keelty—The Wheeler review was commissioned for the Department of Transport and Regional Services, as it then was. As you quite rightly point out, we had a part role in that.

Senator XENOPHON—And it made a key number of recommendations as to the role of the AFP in terms of airport security.

Mr Keelty—That is correct.

Mr Colvin—Senator, if I can help. There are a number of recommendations out of the Wheeler report that relate directly to the AFP. There are also a number of recommendations of course that did not relate to the AFP and are being taken forward as part of a whole-of-government approach. The recommendations related to the AFP certainly have been implemented. We have actioned those recommendations, hence we have a unified policing model at airports.

Senator XENOPHON—So which recommendations of the Wheeler review do you say were implemented?

Mr Colvin—I do not have the recommendations in front of me. There were a number of recommendations in the Wheeler review; the ones that related to the AFP have been implemented.

Senator XENOPHON—Could you take that on notice and provide me with details of those you say have been implemented.

Mr Colvin—We have done that before, Senator. Certainly, we can respond in respect of those that relate to the AFP. I just want to be clear that we do not have carriage of the report. The report is a matter for government; we are not responsible for all of the recommendations.

Senator XENOPHON—Has the AFP made—

Senator Ludwig—Chair, there was a response to the Wheeler report, as I recollect. I think that response outlined that information. I am sure we can find it and provide to the committee.

Senator XENOPHON—I guess the problem is that the information I have had from people that work at airports is that they say little or nothing has changed in terms of the interaction between the various agencies—and I am not saying this is the fault of the AFP. But, in so far as recommendations were made that there be a clear line of communication and sharing of information between agencies, in particular the AFP and the private security firms and the like, what is the AFP's understanding of that flow of information in terms of potential security breaches?

Mr Keelty—We will give you a copy of the response that has been done on the Wheeler review. There were a number of recommendations in Wheeler that talked about various committees being formed at airports. Because of the interests of the airport operator and the airline operators as well as all the key government agencies that are present at airports, and the private sector interests in airports, they actually have a forum that meets at each airport on a regular basis, and that forum, to my recollection, is convened by the airport operator. Separate to that, the department of transport convenes another meeting of government agencies who operate at airports. So, in terms of moving forward with the Wheeler recommendations, there is a significant amount of progress that has been made in relation to your particular question—that is, the exchange of information and cutting down the barriers between agencies. Of course, that is built upon each time there is an incident at an airport, whether it be in Australia or overseas. There was a recent review of the incident at Sydney airport—

Senator XENOPHON—Is this the Wilkins review?

Mr Keelty—conducted by the department, and of course we will continue to work on that as well.

Senator XENOPHON—Just further on that, one of the recommendations that were made was for a more thorough system of background security checks for those that hold an aviation security identification card which must, of necessity, involve a constant flow of information. For instance, if someone is the holder of a card and has been convicted of a relevant offence and that person's security clearance is to be reviewed, what level of information flow is there at the moment? Is there ongoing monitoring of the aviation security identification card so that, if someone has been convicted of an offence and could pose a security risk, the AFP would be informed of that? What are the protocols in place?

Mr Jordana—Senator, I might be able to help with that question. The way that the background checking works for both the aviation and maritime industries is that there are two parts to a check that are done. One part sets out what are called disqualifying criteria, covering a range of issues like convictions or potential convictions, and a police check is done against that set of criteria. If someone fails that set of criteria—if I can use the word 'fail' in that sense—then they will not receive a clearance. The other part of the check is an ASIO check, which is based on, clearly, national security issues. So that is supplied as well, and

there is a green or red light in a sense that is applied as a result of the ASIO check. So that is the way the regime works.

Senator XENOPHON—But the Wheeler review referred to the regime that you referred to, but it also said:

Subsequently recorded convictions are not automatically alerted, and applicants with a pattern of criminality or with major criminal associations are not potentially denied access.

Is that something that has been addressed since the Wheeler review?

Mr Jordana—I cannot speak directly to that question. I would have to check, because I think there is a level of nuance and detail in your question that I could not just field off the top of my head.

Senator XENOPHON—I do not know whether it is that nuanced.

Mr Jordana—Could you read it again?

Senator XENOPHON—Certainly. In paragraph 18 of the executive summary, it says:

Subsequently recorded convictions are not automatically alerted, and applicants with a pattern of criminality or with major criminal associations are not potentially denied access.

Ms Kelly—I can assist. In relation to subsequently recorded convictions, if a holder of an aviation security identification card is convicted of an offence and sentenced to a period of imprisonment there is an obligation under the aviation scheme on that person to notify their issuing body, who can then determine whether their card should be withdrawn.

Senator XENOPHON—So it is an obligation on the person who has been convicted to do the right thing?

Ms Kelly—That is correct. That scheme is the policy responsibility of the minister for infrastructure.

Senator XENOPHON—So if a person who has just been convicted of an offence of dishonesty is not honest enough to tell their employer that they have a conviction, what other safeguards are there?

Ms Kelly—If they have a conviction and are sentenced to a period of imprisonment, there is an obligation to inform their issuing body.

Senator XENOPHON—But, if they have been sentenced for an offence of dishonesty, that may be relevant to their security clearance.

Ms Kelly—If the aviation security identification card is renewed every two years and if a criminal history check is done every two years and if that conviction is a disqualifying conviction then it will be considered at that point.

Senator XENOPHON—One of the criticisms or concerns expressed in the Wheeler review was that if, during the two-year period they have their security clearance card, they are convicted of an offence, short of imprisonment there are no safeguards. There are no safeguards to ensure that the authorities are notified. Are there systems in place, such as the tracking of a criminal database?

Ms Kelly—As I said, the policy responsibility rests in another portfolio, but my understanding is that there is an obligation on the individual and that the risk is managed by a two-year renewal period. So each two years a person's criminal history is checked.

Senator XENOPHON—So, effectively, it has not changed from the time of the recommendation. It has not been acted upon?

Ms Kelly—I do not know the extent of the changes following that report. In relation to the pattern of criminality there were also changes in relation to disqualifying offences—so lesser offences—where there are a number of offences and, although individually they would not disqualify, a pattern of those is now a disqualifying provision for an aviation security identification card.

Mr Jordana—I might just confirm that the carriage of the policy with regard to this matter is the responsibility of another portfolio, so at this point we cannot answer your questions directly.

Senator XENOPHON—Sure. I have one final question in my remaining 45 seconds! The third recommendation of the Wheeler review states:

... there be established within the Australian Crime Commission a unit on aviation and airport criminality to collect, collate, and analyse relevant information on criminal behaviour, and to produce regular reports, including Criminality Assessments at least quarterly.

What is your understanding of whether that has occurred?

Mr Keelty—That has occurred. A number of assessments have been done by the ACC on crime in the transport sector and those have been provided to state and territory police, as well as to the other agencies.

Senator XENOPHON—So there is a separate unit and it provides quarterly reports?

Mr Keelty—I am not sure where the ACC are at the moment with it, but they certainly have produced a number of reports. The ACC will be appearing later if you want to ask them.

CHAIR—Senator Xenophon, we will have the Federal Police after lunch if you need to have more time with them.

Senator XENOPHON—Thank you.

Proceedings suspended from 12.30 pm to 1.32 pm

Senator BRANDIS—In your evidence before lunch, if I remember it correctly, you referred to a People Smuggling Task Force in which the AFP participates with other agencies.

Mr Keelty—That is correct.

Senator BRANDIS—Does it have a name, or is it just called the People Smuggling Task Force?

Mr Keelty—It is an interdepartmental committee on people smuggling.

Senator BRANDIS—Is that its official name, the interdepartmental committee on people smuggling?

Mr Keelty—It under Border Protection Command.

Senator BRANDIS—All right. Just for the benefit of those of us who are less close to this than you are, can you define what Border Protection Command is?

Mr Keelty—It is Customs and border protection, but they are about to appear before the committee.

Senator BRANDIS—When you talk about Border Protection Command, you mean the border protection operations conducted by Customs.

Mr Keelty—That is right. I am talking about the new entity.

Senator BRANDIS—Yes. Which agencies are represented around the table on the People Smuggling Task Force?

Mr Keelty—I stand to be corrected, but it is Border Protection Command, the Department of Immigration and Citizenship, us, ASIS and DFAT.

Senator BRANDIS—What about PM&C?

Mr Keelty—I am told that they are there.

Senator BRANDIS—They are. And what about any of the other national security agencies, such as ASIO or any of the Defence agencies?

Mr Keelty—No. ASIO is not there and Defence is not there, remembering that there is a Defence representation in Border Protection Command. And the Attorney-General's Department, apparently. [1.35 pm]

Senator BRANDIS—Thanks, Mr Wilkins. Is the People Smuggling Task Force the peak body within the government which deals with people smuggling?

Mr Keelty—From an operational perspective, yes.

Senator BRANDIS—As opposed to what? As opposed to a policy perspective?

Mr Keelty—That is correct.

Senator BRANDIS—I want to look at this from an operational perspective with the usual caveat that of course I am not going to ask you to go further than you should go in relation to any operational matters. When was the People Smuggling Task Force first convened?

Mr Keelty—I do not have the exact date, but in its present form it would only be since the creation of the new Border Protection Command.

Senator BRANDIS—Which is when, what month?

Mr Keelty—I do not know. I do not have that on me.

Senator BRANDIS—I will ask the officers who appear later, but prior to the creation of the Border Protection Command was there an analogous body in existence in which Customs was represented and the other agencies and departments to which you have referred were also represented?

Mr Keelty—There have been various iterations over the years of the People Smuggling Task Force. You are quite right; it comprised Customs as a separate entity and Coastwatch as a separate entity in days gone by.

Senator BRANDIS—Would it be fair to say, allowing for the fact that the identity or the shape of some of these agencies has changed over time, that the People Smuggling Task Force in its various iterations has largely operated in much the same way, that it has addressed the same issue and performed its functions in a way that is recognisable over time?

Mr Keelty—Giving due regard to the views of others, I would say that is right.

Senator BRANDIS—I am recollecting years ago when we had the Jane Halton chaired People Smuggling Task Force at the time of the ‘children overboard’ incident. My recollection of that all those years ago is that the then People Smuggling Task Force had a capacity to be convened urgently and on an ad hoc basis to deal with situations which had come into being on short notice. Is that still the case with this People Smuggling Task Force?

Mr Keelty—That is correct.

Senator BRANDIS—Does it also have regular meetings, if I can put it that way? Or is it only convened on an as-needs basis?

Mr Keelty—It meets on both a regular basis and on an as-required basis.

Senator BRANDIS—Who is the lead agency? Who is in charge of convening it?

Mr Keelty—Customs and Border Protection Command.

Senator BRANDIS—Has it been the practice for the People Smuggling Task Force to be convened on an ad hoc basis when reports of suspected illegal entry vessels entering Australian waters or appearing to be heading for Australian waters from international waters come to the attention of those responsible for convening the task force?

Mr Keelty—That is correct, depending on the size and nature of the incident.

Senator BRANDIS—When the People Smuggling Task Force is convened on those occasions, does it have some joint functionality with Navy or with the ADF agencies who may be engaged in the business of monitoring and apprehending those SIEVs?

Mr Keelty—The Navy is obviously represented within Border Protection Command. That is correct.

Senator BRANDIS—So the Border Protection Command delegation to the People Smuggling Task Force includes people from Customs and people from Navy?

Mr Keelty—That is correct, as it did in the old days when the head of Coastwatch was a member of the Navy.

Senator BRANDIS—So Navy is at the table.

Mr Keelty—That is right.

Senator BRANDIS—What about Army and Air Force?

Mr Keelty—Not to my knowledge.

Senator BRANDIS—Again going back to years gone by, there used to be—remember, Mr Keelty, Operation Relex—a joint task force comprising the three services. Is there such an operation in being now in relation to these SIEVs?

Mr Keelty—My recollection of how it used to work was that Coastwatch was the link into Air Force or Army, if it was required; similarly, under Border Protection Command arrangements they are the linkage into the Defence assets, if they are required beyond the Navy.

Senator BRANDIS—So Navy is there, and Army and Air Force are not, but Army and Air Force are there one removed through the Border Protection Command. Is that right?

Mr Keelty—That is correct. I do not personally recall the Army being used on this type of operation. I am of course aware of the Air Force is being deployed.

Senator BRANDIS—At what level is the AFP represented on the People Smuggling Task Force? Do you, for example, Commissioner Keelty, attend meetings ever?

Mr Keelty—No.

Senator BRANDIS—Who attends?

Mr Keelty—It is an assistant commissioner from Border and International.

Senator BRANDIS—Who is that?

Mr Keelty—At the moment, it is an acting position. It is a vacancy. It is acted in by Commander Ramzi Jabbour. Prior to that it was Assistant Commissioner Tim Morris.

Senator BRANDIS—How many times has the People Smuggling Task Force been convened for ad hoc meetings to deal with developing situations since the beginning of this year?

Mr Keelty—I will have to take that on notice.

Senator BRANDIS—Would it be more than half a dozen times?

Mr Keelty—I would only be guessing. I know it convenes and I get a briefing on issues that I need to be briefed on, but I do not have the detail of how often they have convened this year.

Senator BRANDIS—Was it convened last month at the time of the so-called SIEV36 incident?

Mr Keelty—It was, but I do not have the details here. Again, Border Protection Command chaired a meeting.

Senator BRANDIS—I will ask them, too. One of the points of these estimates committees, as you will remember from long experience, is to ask as many relevant questions of as many different actors in these events so that the parliament may be as well informed as is possible of what happened.

Mr Keelty—I was just trying to save the senator's valuable time.

Senator BRANDIS—No, you never waste the time of the committee, Commissioner, if I may say so. Had the People Smuggling Task Force been convened prior to the incident on the SIEV36 near Ashmore Reef on Thursday 16 April?

Senator BRANDIS—Mr Wilkins?

Mr Wilkins—I was just going to say in relation to this incident that, although I do not think we are going into this territory yet, there are various investigations going on, as you would be aware, by the police and the coroner. I just want to say that we do not want to get into areas that they are traversing on this. I do not think we are there yet but I am suggesting that that will be something that will probably come up in this context, perhaps when Customs appears next as well. I am suggesting that there may be some areas where it will be difficult to necessarily answer questions on these matters, that is all, because it will traverse areas that are currently being investigated. We do not want to prejudice those investigations.

Senator BRANDIS—I understand that. You of course would be aware that the opposition has taken the view, after careful reflection, that the degree of information communicated to the public concerning this incident by the government has been less than it should have been. I understand you are subject to the instructions of your political masters, but I will proceed to ask my questions. If those questions meet with a refusal to respond, then so be it and people can draw their own conclusions.

Mr Wilkins—No. It is not actually anything to do with what the government's view is. This is based on—

Senator BRANDIS—The government's view has been stated by Mr Debus, in particular in his infamous *7.30 Report* interview on the evening of Thursday 16 April.

Mr Wilkins—No, this is based on advice from the police involved and from the coroner about where we should and should not go. I am not interested in the politics of information; I am just saying that we have some issues around the fact that we do not want to prejudice an investigation.

Senator BRANDIS—Neither do I. I absolutely understand that.

Mr Wilkins—Okay.

Senator BRANDIS—But the point you are making is slightly oblique to the point I am making, and I would not like to see the Australian Federal Police, or for that matter your department, used by the government as a mask for concealing information from the general public under the pretext of an instruction to you not to enable an investigation to be impeded.

Mr Wilkins—No, and that is why I just wanted to make it clear that there has been no such instruction. This is based on advice that we, as agencies, have received in this respect.

Senator BRANDIS—But I will make sure that my questions will be directed not so much to the incident itself, but to what information about the incident was known to various responsible persons in the government and in relevant agencies, and when they became aware of those facts. I am at a loss to see, if my questions are not about the incident but about the chains of reporting within government, that could prejudice an investigation into the facts of the incident, if that helps.

Mr Wilkins—I am not saying that you were currently traversing areas that we are uncomfortable about.

Senator BRANDIS—Indeed. Thank you. I think we understand each other perfectly. The question I think I was in the middle of, Mr Keelty, is this: was the People Smuggling Task

Force in session, or had it been convened, at the time when news came of the unfortunate incident on SIEV36 on Thursday 16 April?

Mr Keelty—I am sorry. I honestly do not know the answer to the question. The people at the table here do not know when it was convened.

Senator BRANDIS—You can take that on notice, please. If the task force was not already in session at the time when news of this incident filtered through, it would have been convened pretty quickly, I assume?

Mr Keelty—The problem with answering the question is that I am intimating a certain level of knowledge about when the task force was convened. I do not have that knowledge here.

Senator BRANDIS—Was the task force convened at all at the time of the incident on 16 April 2009, whether because it had already been convened in response to this unlawful entry vessel or because it was convened in response to a report of the tragedy that occurred near Ashmore Reef?

Mr Keelty—I do not have specific information here to say when the task force was convened.

Senator BRANDIS—No, I am not asking you now for a time. I am asking you for a fact. Was it convened at all?

Mr Keelty—I imagine it was.

Senator BRANDIS—That is what I started by saying—that I assume it was—and you are agreeing with me that that is a safe assumption that it was. Deputy Commissioner Negus, can you help us?

Mr Negus—No, I am sorry. Again, I did not attend that meeting and I do not have any details of that in my brief. I am sorry.

Senator BRANDIS—Are there officers available in Canberra who attended that meeting?

Mr Negus—I am sure that, sitting outside the room here, the Customs and Border Protection Command who chaired the meeting would be able to give you some details.

Senator BRANDIS—I will ask them, but you see I am asking you now. I want to know what the Australian Federal Police was told.

Mr Negus—Yes, there is an officer available in Canberra who attended that meeting.

Senator BRANDIS—Perhaps he could be brought to the parliament now, if that is possible. Would that be possible?

Mr Keelty—The actual officer involved who attended the meeting is on sick leave.

Senator BRANDIS—If he is on sick leave, then I will not persist with that request.

Mr Wilkins—There is no such thing as this task force. There are actually two groups. I thought that it might be useful if Elizabeth Kelly explained the configuration of committees and groups in relation to this matter.

Senator BRANDIS—Mr Wilkins, I am happy for Ms Kelly to do that; that may be very useful, but please understand I have been told by Commissioner Keelty that there is a task force.

Mr Wilkins—I think he is using that term. There is something you might describe as a task force—

Senator BRANDIS—That is why I asked him what its name was, you see: to give it a little bit more definition.

Mr Wilkins—But it might be more useful to explain the actual configuration.

Senator BRANDIS—By all means. Ms Kelly?

Mr Wilkins—Or Miles Jordana, actually.

Senator BRANDIS—Mr Jordana, you are an old hand at this sort of thing.

CHAIR—A very old hand.

Mr Jordana—Perhaps I can assist, Senator. There is a group which I think used to have the task force nomenclature, but is now an incident group.

Senator BRANDIS—An incident group?

Mr Jordana—Well, I cannot—

Mr Wilkins—What is the proper name of it?

Mr Jordana—The name is the Maritime Incident Management Group. That is chaired by the Border Protection Command. That is the operational group. There is a People Smuggling Task Force, which is a more senior body.

Senator BRANDIS—I am sorry, I thought Mr Wilkins just said that there was not one. There is a task force?

Mr Jordana—I am sorry, I think what the secretary was talking about was that the old task force is no longer called the task force. I was a bit confusing, I know.

Senator BRANDIS—So there is now a People Smuggling Task Force, but it is not the same as the old People Smuggling Task Force.

Mr Jordana—Exactly.

Senator BRANDIS—Okay.

Mr Jordana—The operational group is the Maritime Incident Management Group, chaired by Border Protection Command, and there is a senior level more policy oriented group, which is called the People Smuggling Task Force and the National Security Adviser from PM&C chairs that.

Senator BRANDIS—Now, Commissioner Keelty, having heard Mr Jordana's description of the architecture of this, may I take it that the body you have in mind and which you have been describing as the operational body is that which we are now told is the Maritime Incident Management Group? Is that what you are talking about?

Commissioner Keelty—That is correct, Senator.

Senator BRANDIS—Thank you very much. That is very helpful. When there is an incident, such as happened near Ashmore Reef on 16 April, from what agencies does information come to the Maritime Incident Management Group? Maybe Mr Jordana is the best person to answer this.

Mr Jordana—No, I am not, Senator.

Senator BRANDIS—You are not?

Mr Jordana—I would suggest to you that when we have our Customs folk here—

Senator BRANDIS—Sure, I will ask them.

Mr Jordana—Border Protection Command, which chairs that particular group, will probably be in a better position to answer.

Senator BRANDIS—Yes.

Mr Jordana—I have never attended such a meeting, so I do not know, Senator.

Senator BRANDIS—All right. I am just trying to put the jigsaw puzzle together, Mr Jordana. Commissioner Keelty, do you know from which agencies the Maritime Incident Management Group receives information in relation to an incident?

Mr Keelty—Not being at the meeting personally I do not know the answer to that question, Senator, but we can get that, obviously, from an AFP perspective.

Senator BRANDIS—Yes. Can you take that on notice, please?

Mr Keelty—Yes.

Senator BRANDIS—Is the Australian Federal Police itself, not necessarily always but on occasion, one of the agencies which contributes information to the Maritime Incident Management Group?

Mr Keelty—That is correct.

Senator BRANDIS—Obviously without going into anything which it is not appropriate to say for security reasons, what type of information—not the details, but what categories of information, broadly described—does the Australian Federal Police contribute?

Mr Keelty—It would be what we would call tactical detail in relation to material that is provided to us from another party or from our own possessions.

Senator BRANDIS—Give me an example. You could make it a hypothetical example, if you want to, to protect security.

Mr Keelty—For example, if we were to learn from our foreign colleagues in Indonesia or elsewhere that a vessel had departed, we would put that information into the meeting.

Senator BRANDIS—You told me before lunch about the joint operations between the Australian Federal Police and the Indonesian police. You agreed with me that one of the things that was done was described by you as a joint task force. You told me that one of the functions of the joint task force, which is the Indonesian based collaborative operation between the AFP and the Indonesian police, was to gather and pool intelligence. Is the Maritime Incident Management Group the point within the Australian government at which

information concerning people smuggling, gleaned by the joint task force, is communicated by the AFP to other Australian agencies?

Mr Keelty—It could well be. There is a fusion centre where the intelligence provided by the agencies participating is pooled to form—

Senator BRANDIS—Did you say a fusion centre?

Mr Keelty—That is correct.

Senator BRANDIS—All right. Where is that? Is it in Canberra?

Mr Keelty—Yes, it is. The purpose of that is to pool the intelligence holdings of the contributing agencies to get an overall picture.

Senator BRANDIS—But that fusion centre is a different from the Maritime Incident Management Group, is it not?

Mr Keelty—That is correct, but the fusion centre would feed the intelligence in to the Maritime Incident Management Group.

Senator BRANDIS—I see.

Mr Keelty—So in answer to your earlier question, it would not necessarily come directly from the joint task force in Jakarta; it would come into the fusion centre to be collated with other intelligence holdings. Those intelligence holdings, the whole piece, would be fed into the incident task force.

Senator BRANDIS—Right. I understand that. Who are the agencies who contribute to the fusion centre? AFP does, obviously.

Mr Keelty—AFP, ASIS, Border Protection Command and DIAC.

Senator BRANDIS—Are reports prepared by the AFP in relation to people smuggling activities submitted to the fusion centre, or does the fusion centre deal with raw intelligence?

Mr Keelty—It deals with the raw intelligence.

Senator BRANDIS—Where the AFP prepares its own reports or assessments, would it customarily contribute those reports and assessments to the Maritime Incident Management Group, if they are germane to a particular incident?

Mr Keelty—Yes, it would, depending on the purpose of the material. It would definitely go there, but obviously, as I mentioned before, sometimes there is a dual purpose to the material that is gathered.

Senator BRANDIS—Sure.

Mr Keelty—And sometimes it is used for evidence gathering as well.

Senator BRANDIS—It could be used for any one of a number of things, could it not? It could be used to inform your thinking to be a basis for your preventive strategies, as you said before lunch, to advise government, to advise other agencies, and for the purposes of prosecution. Each of those purposes would be potentially served by AFP assessments and reports on people-smuggling activity.

Mr Keelty—That is correct.

Senator BRANDIS—To whom would such reports routinely be distributed? May I take it that a report that is submitted or placed before the Maritime Incident Management Group is for that reason taken to be circulated to the participating agencies who comprise the group?

Mr Keelty—Yes.

Senator BRANDIS—Is it routinely submitted to your own minister?

Mr Keelty—Not that I am aware of; certainly not through the AFP to give tactical intelligence to the minister.

Senator BRANDIS—But it is given to Attorney-General's. I suppose I can ask them at the appropriate time whether they pass it on. Did you say DIMIA is part of the Maritime Incident Management Group?

Mr Keelty—DIAC, yes.

Senator BRANDIS—DIAC, sorry. I am falling behind with all these acronyms.

Senator FIERRAVANTI-WELLS—It changed some time ago.

Senator BRANDIS—DIAC. Thank you, Senator Fierravanti-Wells.

Mr Keelty—It is like the formation of task forces, Senator. It is a very similar problem.

Senator BRANDIS—Yes. It is like alphabet soup, isn't it, Commissioner Keelty?

CHAIR—Commissioner Keelty, we were waiting for your parting shots.

Senator Ludwig—Take that one on the chin.

CHAIR—You have fired up now.

Senator BRANDIS—I am entertained, not wounded, Commissioner Keelty. And again it would be a matter for DIAC whether it would pass any report circulated to it and generated by the AFP to its minister.

Mr Keelty—I have no knowledge of what other departments do.

Senator BRANDIS—All I am getting at, Senator—Mr Commissioner Keelty.

Mr Keelty—I am not there yet, Senator.

Senator BRANDIS—Well.

Senator Ludwig—There could be a career yet!

Senator BRANDIS—You do not restrict any report you submit to the Maritime Incident Management Group in such a way that the agencies or departments who sit on that group are not permitted to convey those reports to their respective ministers? That is all I am getting at. Is that right?

Mr Keelty—That is correct, Senator.

Senator BRANDIS—I apprehend you will want to take this on notice, but did the AFP contribute information, to use a neutral word, to the meeting of the Maritime Incident Management Group that took place arising from the 16 April incident concerning SIEV36?

Mr Keelty—If it is all right with you, Senator, I will take that on notice because I do not know.

Senator BRANDIS—You do not know. All right. Mr Jordana, did you say that PM&C is on the Maritime Incident Management Group?

Mr Jordana—I suspect they may be, but I am not 100 per cent sure about the membership of that.

Senator BRANDIS—Can you check that for me, please?

Mr Jordana—We can certainly check it for you. What I did say was that PM&C, and indeed the National Security Adviser, chair the People Smuggling Task Force, which is the senior level group for policy.

Senator BRANDIS—That is for policy.

Mr Jordana—That is right.

Senator BRANDIS—No, I want to restrict myself to the operational group for the moment. Is it ever the case, by the way, that ministerial advisers either from the Prime Minister's office, the Attorney-General's office, the Minister for Home Affairs office or the Minister for Immigration and Citizenship's office, attend meetings of the Maritime Incident Management Group?

Mr Jordana—Again, because I have attended neither of those groups, I cannot speak with any authority. That would be very unusual.

Senator BRANDIS—Yes.

Mr Jordana—But, again, I cannot say 100 per cent whether they are or not.

Senator BRANDIS—What I am interested in tracking down really are the chains of reporting from this body up to the political level of government. What are they, Mr Jordana?

Mr Jordana—In the press release that was issued by the government around budget time, it indicated, for example:

The Rudd Government has also established a dedicated Border Protection Committee of Cabinet which will be supported by the newly-established Border Protection Taskforce, to drive the Government's response to the people smuggling threat.

The senior level body I was speaking of, which is that Border Protection Taskforce, is obviously answerable to the Border Protection Committee of Cabinet.

Senator BRANDIS—Okay. I will pursue that in the appropriate quarter.

Senator BARNETT—Can you take on notice Senator Brandis's question about ministerial staff, please?

Mr Jordana—Certainly, we can.

Senator BRANDIS—After the people on SIEV36 were rescued—and, as we know, some of them were badly burned and were taken to hospitals in various parts of Australia and others who were not injured were taken to Christmas Island—did the Australian Federal Police commence a program of interviewing those people?

Mr Keelty—As pointed out by the secretary, there is coronial inquiry into this now. The Northern Territory police have the carriage of that investigation. The AFP has been providing support to them in the form of an immediate deployment to Darwin of nine investigators, two

intelligence officers, two forensics officers, a family liaison officers, one administrative officer and six interpreters. As of 13 May, the status of the passengers and crew was that four people were in the burns unit at the Royal Brisbane Hospital, and one of those four is a crew member; five people are in the Royal Perth Hospital, including one crew member; 14 people are in immigration facilities in Darwin; 18 people are in immigration facilities in Perth; three are in immigration facilities in Broome; and five people are either deceased or unaccounted for.

Senator BRANDIS—Leaving aside the five people who are deceased or unaccounted for, there are nine still in hospital.

Mr Keelty—That is as of 13 May.

Senator BRANDIS—And that is the most recent information you have, presumably.

Mr Keelty—That is right.

Senator BRANDIS—You might take on notice that you might refresh that information, please. But dealing with the information in the most recent form in which you have it, nine are still in hospital and 35 are in immigration facilities in three centres: Darwin, Perth and Broome. I am very mindful of what Mr Wilkins has said and I am not going to ask you any question that could possibly trespass upon the coronial inquiry. All I want to know is whether all of those people have been interviewed by the Australian Federal Police, or, if not, how many of them have been?

Mr Keelty—I cannot give you the figure. We have been taking witness statements from some of the people, but I do not know how many and which ones.

Senator BRANDIS—Pausing there, given that at least one, probably two and potentially more than two crimes have been committed here, may I take it that it would be your intention to interview all of the people when they are in a condition in which they are fit to be interviewed?

Mr Keelty—That is correct—well, when you say ‘all of the people’, certainly those identified as relevant to any Commonwealth charges that could be laid. We have been assisting the Northern Territory police in the preparation and execution of section 3 search warrants under the Crimes Act 1914. But in relation to ‘all of the people’, I am not confident I can confirm that now. But if you will enable me to, I will take that one on notice.

Senator BRANDIS—You have spoken of nine people in hospital and 35 people in some form of detention, so we are talking about 44 people.

Mr Keelty—Yes. That is the status of where those people are as of 13 May. That is not to say that we have actually spoken to them.

Senator BRANDIS—No. I did not understand you to be saying that. There are 44 people. All of these people were on the boat, were they not?

Mr Keelty—That is correct.

Senator BRANDIS—There is nobody among those 44 who was not on the boat. Potentially they could all have something to tell you about the crime or crimes that may have been committed involving this boat and this incident. Until you speak to them you do not

know what they know, so presumably you would have at least a preliminary interview with each of them.

Mr Keelty—Depending on their state of health.

Senator BRANDIS—Of course; I think that goes without saying. In fact, I think I said that before. Subject only to that presumably you would have at least one interview with each of them to determine what they might be in a position to tell you. Is that right?

Mr Keelty—That is correct. In coordination with what the Northern Territory is doing, without the deaths.

Senator BRANDIS—Certainly. Subject again to the nine people in hospital being able to speak to you, has that first interview now taken place with everyone?

Mr Keelty—I am sorry, Senator. I cannot answer that question, only because I do not know the answer to it.

Senator BRANDIS—Would you take that question on notice?

Mr Keelty—Yes.

Senator BRANDIS—It is now nearly six weeks—six weeks on Thursday, I think—since this unhappy event took place. Allowing for the fact that some of these people were badly burned and were not fit to be spoken to, but allowing only for that, one would have thought that getting towards six weeks after this incident there would have been a preliminary interview, at least with those of them who could speak to you. Would you expect that to be a reasonable expectation of the progress of this investigation, Commissioner?

Mr Keelty—The issue that takes the priority, of course, is the deaths. As to whether there are any criminal offences under the Northern Territory law, or whether there are any Commonwealth offences relating to the people smuggling activity, that is not taking precedence over the Northern Territory investigation, if you understand what I mean. We are trying to complement what the Northern Territory is doing with its priority coronial inquiry, but at the same time we are trying to see whether anything needs to be done in respect of criminal offences under the Crimes Act 1914, remembering that at least two of the people that are hospitalised are crew.

Senator BRANDIS—Have you provided a report of any kind to the government relating to your investigations into this incident?

Mr Keelty—Not to my knowledge. It would be unusual for us to give a report to government on an ongoing investigation. We may have given a briefing to the minister on our involvement in the matter, but I am certainly not aware of it and I have been away.

Senator BRANDIS—All right. Mr Jordana or Commissioner Keelty might be able to help me with the next issue. Has there been a meeting subsequent to the 16 April meeting of either the Maritime Incident Management Group or the People Smuggling Task Force, the higher policy body, at which there has been a briefing about or a discussion of this incident?

Mr Jordana—I do not know.

Senator BRANDIS—Commissioner Keelty?

Mr Keelty—I am sorry, Senator, this falls back into the category of ‘I presume they have’ but I cannot confirm it because neither I nor the deputy attended the meeting.

Senator BRANDIS—Thank you, Commissioner Keelty. That is all on that topic. I wish now to turn to another matter.

Senator BARNETT—Commissioner Keelty, I have a couple of questions regarding the Northern Territory intervention. I wanted to ascertain your advice regarding the increase in violence and the abuse of children in some of the larger towns. I refer to page 203 of your portfolio budget statement. I would like to know specifically your views regarding trends relating to the level of violence and child abuse in the Northern Territory. Has it gone up or down? What are your views with respect specifically to violence and child abuse in the major towns, as in Darwin and Alice Springs. There seems to be a transfer—a reduction in the smaller towns and an increase in the larger towns. Could you assist us in that regard?

Mr Keelty—Not in any detail. As I understand it, on Friday FaHCSIA is coming with some other officers to provide evidence about that.

CHAIR—It will be Friday week, Commissioner Keelty, when the FaHCSIA element of community affairs is present at these estimates.

Mr Keelty—We will have some of our officers available with FaHCSIA officers when they appear, Madam Chair.

CHAIR—Senator Barnett, I might be able to help you. I understand that the operational matter is with the Northern Territory police. Last Thursday in Darwin, as part of the rural and regional indigenous Senate select committee, the Northern Territory police came before us for about an hour or an hour and a half. They certainly answered a lot of those questions and their answers are in the transcript. I do not know whether or not that assists you at all, but they are the people who have the detailed knowledge of the answers that you are seeking, Senator Barnett.

Senator BARNETT—Quite possibly. However, Mr Keelty might give us his response to what he knows and his involvement in the purview of the Australian Federal police.

Mr Negus—Senator, let me clarify the position for you. The AFP officers attached to the intervention are sworn into the Northern Territory police. They do not report back separately to the AFP on crime statistics; it is all part of the Northern Territory police function in that area. We do not have any separately held statistics or trend data, apart from what the chair has mentioned.

Senator BARNETT—How is it then reported to the relevant ministers within the federal government?

Mr Negus—Through FaHCSIA, which manages the intervention of those liaison points within the Northern Territory police to provide that.

Senator BARNETT—How many police do you currently have in the Northern Territory in such a role?

Mr Keelty—We have 61 deployed to the Northern Territory as part of the response. Forty-six members are deployed to remote communities, seven members are deployed to the joint

Northern Territory police-AFP child abuse task force, which is located in Darwin, and eight members are based in Darwin, including the contingent commander.

Senator BARNETT—Are they all part of the Northern Territory force and they report directly?

Mr Keelty—That is correct.

Senator BARNETT—I will pass on that information. Thank you for that. I will have some questions for the Australian Crime Commission when it appears before us about the Northern Territory intervention. I would now like to ask the department about two consultancy reports—Nos 11 and 12. In answer to a question on notice from me—this is part of the package of 471 to which you responded—I note that the Tangentyere strategic planning report is to commence on 1 June 2009—\$16,100, direct source, to Senatore Brennan Rashid.

Could you advise whether that is still proceeding? I presume it is to commence on 1 June, but you need to make that clear. Apparently, it involves an amount of \$16,100. The second report in which I am interested is the implementation of the Town Camp Reviews. That one is 1 April 2009 and the amount involved is \$17,950. We would like to know more about those two reports.

Mr Wilkins—Could you say that again? I have this schedule, Senator, but No. 11 here is Acumen Design Australia.

Senator BARNETT—This is attachment B, and this is for consultancies planned or budgeted for this calendar year.

Mr Wilkins—Right. So are we talking about No. 11?

Senator BARNETT—We are talking about Nos 11 and 12.

Mr Wilkins—I will have to take that question on notice and get you some more information on those. I cannot answer them off the top of my head.

Ms Kelly—The division head responsible for that, Ms Jones, will be here at eight o'clock this evening. She will be able to answer those questions.

Mr Wilkins—Do you want us to answer that question then?

Senator BARNETT—Yes, that would be fine. In advance, could you get as much information as you can, specifically relating to the terms of reference. Could you also establish whether any report was done. We would like to be made aware of it.

Mr Wilkins—Okay.

Senator BARNETT—Thank you very much.

Senator BRANDIS—Commissioner Keelty, earlier you and Mr Wood confirmed the accuracy of my reading of table 2.1 of the PBS. The increase in total staff, including operational and administrative staff, of the AFP would be four—from 5,357 to 5,361. I am reminded of some evidence that the AFP gave during the estimates in May 2008 about the government's election promise in 2007 to increase the number of AFP officers by 500 over five years. I am looking at last year's estimates. I am reminded by Senator Fierravanti-Wells

of what you said at the foot of page 44 of the Hansard of last May's estimates in response to some questions from me about this matter. You said:

There is a recruitment strategy to make the 500 up, exactly as the government has promised, over the next five years, commencing with this financial year. We intend to recruit 30 new people this year, 30 in the following year, 40 in the following year and 200 in each of the last two years of the five-year program.

That is how the 500 were to be made up. I will have a copy of this statement shown to you as soon as it can be made available, Commissioner Keelty. If we look at pages 134 and 135 of last year's portfolio budget statement, we find a line item in table 1.2, 'Budget measures'. Let me put that document in front of you. On page 134, table 1.2, there is a line item, 'Budget measures'. A little over halfway down on page 134 is the statement 'Sworn Australian Federal Police officers increase', and then the cost of that increase, \$5,342,000, is given for the budget year 2008-09. Speaking from the perspective of last year's budget, in the out-years the figures are as follows: in 2009-10, \$10,271,000; in 2010-11, \$16,931,000; and, in 2011-12, \$53,356,000. In this year's portfolio budget statement table 1.2, 'Agency budget measures', I do not see an equivalent line item. There seem to be a lot of dashes and blank spaces where particular programs are treated. Commissioner Keelty or Mr Wood, where are we to find in this year's portfolio budget statement table 1.2 the equivalent treatment for 'Sworn Australian Federal Police officers increase' in last year's portfolio budget statement table 1.2?

Mr Keelty—I will hand over to Mr Wood. The first point to make is that this is an announcement in the previous financial year, so I do not expect the government to have repeated the announcement. If you look at the footnote on page 134 you will find that it takes you to the out-years of 2013 and 2014. It gives you the full five-year effect of the recruitment strategy—

Senator BRANDIS—This is in last year's portfolio budget statement?

Mr Keelty—In last year's portfolio budget statement. I would not expect that to be repeated in this year's portfolio budget statement because the government has already made the announcement and it has already been publicised.

Senator BRANDIS—All right. If that is the simple answer, let me cut to the chase. In the current year—in 2009-10—was \$10,271,000 spent or appropriated to the AFP to increase the number of sworn officers?

Mr Wood—Yes. It does not appear in the 2009-10 PBS for table 1.2 because that shows only the new measures.

Senator BRANDIS—Where do I look for it?

Mr Wood—It will be in table 1.1, which is the overall resource statement that includes not an individual line item for that but the overall appropriation for the agency. Because it was fully announced for the five to six out-years in the 2008-09 PBS, it does not have to be repeated in future PBSs. It must be a line item if it is varied—that is, if it is not continued as originally intended or is in some other way varied. Because it has not been varied it does not appear as an individual line item.

Senator BRANDIS—All right. That makes that clear. Were 30 new sworn officers recruited in the current year, as was predicted last year?

Mr Wood—The 30 additional officers will be recruited before the end of the year. They are in various stages of recruitment at the moment.

Senator BRANDIS—But before the end of this financial year?

Mr Wood—Before the end of this financial year. I think that is the same evidence we gave in February.

Senator BRANDIS—All right. Is it still the intention of the AFP to recruit 30 new officers next year?

Mr Wood—Next financial year, that is correct.

Senator BRANDIS—And 40 the following year?

Mr Wood—That is correct.

Senator BRANDIS—And 200 in each of the subsequent years?

Mr Wood—In each of the subsequent years, that is correct.

Senator BRANDIS—And that will require a fresh appropriation in each of the budgets in advance of those financial years?

Mr Wood—It will require the appropriation of the total that you have been quoting that is spelled out in the 2008-09 PBS.

Senator BRANDIS—You are in a position to tell me that the appropriation foreshadowed in table 1.2 of last year's PBS has been made?

Mr Wood—Correct, Senator. It has been passed by parliament.

Senator BRANDIS—Sorry, I think I asked you the wrong question. The appropriation foreshadowed for 2009-10—I think that is what I asked you, in fact—appears in the appropriation bills that the Treasurer introduced into parliament with the budget?

Mr Wood—As I explained, probably not as an individual line item, but it is included in the appropriation that the AFP is receiving for the calendar financial year 2009-10.

Senator BRANDIS—Is it included only in a grossed up figure that is available for expenditure on other things?

Mr Wood—No, because it is spelled out year by year in the 2008-09 PBS and there has been no change to the 2008-09 PBS, which includes 2008-09 plus the forward five years. If there were a variation to that PBS it would have to appear as a new line item. There is no variation to the original appropriation.

Senator BRANDIS—All right.

Mr Wood—Similarly, none of the other new measures in the 2008-09 PBS appear as individual line items in the ongoing appropriations.

Senator BRANDIS—I understand that. If that is so, does the fact that there has been an increase of only four staff to the AFP in the past year indicate that there has been a loss of staff in other areas, allowing for the recruitment of 30 new sworn officers?

Mr Wood—That is correct, Senator. I do not have it broken down area by area, but certainly changing demands in a number of areas of our business, whether it be the protection business or some of the corporate support areas, have meant that we have had reductions in staffing numbers in other parts of the organisation.

Senator BRANDIS—Does that include sworn officers?

Mr Wood—There are times when sworn officers work in corporate enabling services or direct operational support such as intelligence, so it can include sworn officers in those sorts of roles.

Senator BRANDIS—What I am getting at, Mr Wood, is that if you have increased or recruited 30 new sworn officers as foreshadowed by Commissioner Keelty last year but you only increased your staff establishment by four, leaving aside other variables, of the 26 lost some of those have been sworn officers. There has not been a net increase of 30 at all. Has there been a net increase of 30 sworn officers?

Mr Wood—Senator, the overall numbers also include ACT policing and their numbers can change quite independently.

Senator BRANDIS—No, they are accounted for elsewhere. We went through that last year, Mr Wood.

Mr Wood—We certainly did. I am just making sure that we still recall it.

Senator BRANDIS—That has been dealt with and we understand it, so you will not get me pursuing that particular red herring. If 30 new sworn officers have been recruited but up to 24 existing sworn police have been lost there has not been a net increase of 30 sworn police at all, has there?

Mr Wood—Senator, I have the numbers of the increase since July last year.

Senator BRANDIS—I am happy for you to give us those numbers. However, before you do so, let us cut to the chase. Some of the positions lost have been sworn police, have they not?

Mr Wood—Some of the positions could have been occupied either by a sworn or unsworn member, and in some cases they were occupied by a sworn member.

Senator BRANDIS—So the answer to my question is yes?

Mr Wood—In some cases the sworn member gets transferred to operational roles instead of leaving them in that role. It is not a one-for-one relationship.

Senator BRANDIS—I understand that. In any event there is an increase of only four in the total number of staff positions, including sworn officers. Allowing for the fact that 30 new sworn officers, as Commissioner Keelty has told us, have been recruited, that does not reflect a net increase of 30 in the number of sworn officers, given that some of the 24, or some of the difference in positions lost, are also sworn officers. Is that right?

Mr Wood—The increase in 30 is 30 over the numbers we would have had if the particular measure from government had not existed.

Senator BRANDIS—In other words, if the government had cut your funding even more you would not have made up the 30? There has not been a net increase—

Mr Wood—But that is not what happened.

Senator BRANDIS—There has not been a net increase of 30 sworn officers, has there?

Mr Wood—The figure that I have here since July 2007—

Senator BRANDIS—Do not make me feel like Tony Jones interviewing the Prime Minister, Mr Wood. You are allowed to say it if it is true. There has not been a net increase of 30 sworn officers.

Mr Wood—Since what date, Senator?

Senator BRANDIS—In the period accounted for by table 2.1.

CHAIR—We would never want you to feel like Tony Jones, Senator Brandis.

Senator BRANDIS—Has there been?

Mr Wood—I do not believe so, Senator, no.

Senator BRANDIS—Thank you.

Mr Wood—I repeat that there will be 30 more officers by the end of this financial year. There are 30—

Senator BRANDIS—Thirty new faces. I am sure there are 30 new faces. That is not the point of my question, as you well know, Mr Wood.

Mr Wood—Madam Chair, may I finish my sentence?

CHAIR—Yes.

Mr Wood—There are 30 more officers as a result of this government's measure than there otherwise would have been. That does not necessarily equate to a net increase of 30.

Senator BARNETT—Mr Wood, let me follow the questions asked by Senator Brandis. I am looking at an answer to question on notice No. 94. I asked about sworn officers, other officers and other members of staff and said:

What are the current levels of staffing? Has there been a decrease in staffing levels?

You have then given me figures from July 2004, 2005, 2006, 2007 and 2008 until February 2009.

Mr Wood—Yes.

Senator BARNETT—From July 2007 it is 6,036 officers plus 236 state police. It then goes to 6,598 plus 293 state police. In February 2009, there were 6,304 officers and 234 state police. Based on my maths, that is a reduction of 294 staff and a reduction of 59 state police from July 2008 to February 2009. If that is correct how does that correlate with your answer to Senator Brandis? Can you explain that to me?

Mr Wood—I think it reinforces the way I carefully expressed the answer, Senator.

Senator BARNETT—What does that number of 6,304 comprise?

Mr Wood—I do not have the breakdown of figures as at February 2009. I do have the breakdown from a more recent table. As at 15 April, Senator—and these are the most recent figures that I have—the AFP had 4,086 operational staff and 2,203 unsworn staff. I will break that down further in a moment. The operational staff were split into 2,857 sworn police and 1,229 protective service officers.

Senator BRANDIS—What was the date on that?

Mr Wood—That is as at 15 April 2009, Senator.

Senator BARNETT—Sorry?

Mr Wood—The figure is 1,229 protective service officers.

Senator BARNETT—All right. Give us the same figures for 30 June last year, if you could.

Mr Wood—I have the total staffing levels but not the breakdown, Senator. I have previously provided them at estimates but I will take that question on notice.

Senator BRANDIS—Of those 4,086 operational officers—2,857 sworn police and 1,229 protective service officers—

Mr Wood—Correct, Senator.

Senator BRANDIS—Let us take the 2,857 figure first. Does that include or exclude ACT police?

Mr Wood—That includes ACT police, Senator.

Senator BRANDIS—Of that 2,857 how many were ACT police?

Mr Wood—I will have to take that question on notice, Senator. I have the total staffing level for ACT police but not the individual breakdown for ACT police.

Senator BRANDIS—This is important. Is there somebody who can assist you? I want to know the total number of ACT police included in that figure of 2,857. Does that figure of 2,857 also include officers on secondment to the AFP from other state and territory police forces?

Mr Wood—No. Additionally, 231 state and territory police were seconded to the AFP as at that same date, so there are a further 231.

Senator BRANDIS—That is on top of the 2,857 is it?

Mr Wood—There are a further 231, yes, Senator.

Senator BRANDIS—Thank you.

Senator BARNETT—But that does not include the ACT police; that is still a separate figure?

Mr Wood—That is correct, Senator. The ACT police will be included in the first figure I mentioned—the figure of 2,857.

Senator BRANDIS—Mr Wood, according to your 2007-08 annual report, on 30 June 2008 the Australian Federal Police, including the ACT police, had 2,855 officers. You said in

evidence that on 15 April 2009 the Australian Federal Police, including the ACT police, had 2,857 sworn officers—an increase in nine months and two weeks of two officers. Is that right?

Mr Wood—Those figures are correct, Senator. At other points in time between those two dates the figure could be higher, and at other points in time it could be lower. It is a figure that moves around with both attrition and recruitment.

Senator BRANDIS—These are the dates that you have chosen for the purposes of making the comparison. This is your evidence and these are your documents, Mr Wood.

Mr Wood—That is correct, Senator.

Senator BRANDIS—So there has not been a net increase of 30 sworn officers; there has been a net increase of two.

Mr Wood—Senator, I indicated that the extra 30 would be recruited before the end of the year.

Senator BRANDIS—Oh, I see. That is convenient.

Mr Wood—I also said that in February. I indicated that it would be around the May-June time frame that they would be brought on board. I said that in February and that is still the case.

Senator BRANDIS—In the meantime, between when the 2007-08 report was compiled and today, the total increase in numbers has been two sworn officers?

Mr Wood—That is correct, Senator.

CHAIR—Have we finished?

Senator BRANDIS—I think that will do.

CHAIR—Mr Keelty, I think that finishes our—

Senator BRANDIS—I am sorry, Madam Chair, I do not have a new question but I asked Mr Keelty whether he would confirm the figure he gave before lunch that the Australian contribution to the joint people smuggling task force in Indonesia was a number fewer than six. Could he specify what the number was?

Mr Keelty—We read it onto the record.

Senator BRANDIS—I am sorry, I was not here.

Mr Keelty—It is five.

Senator BRANDIS—Thank you. That is a number fewer than six; I have to give you that.

Mr Keelty—I always tell the truth, Senator.

Senator BRANDIS—I know you do.

Mr Keelty—Just in relation to the last line of questioning, of course, those recruits to be on our books by the end of this financial year, have already been recruited. They have not graduated. We do not count them until they graduate.

Senator BRANDIS—Thank you.

CHAIR—Thank you for your time this afternoon. I understand, Commissioner, that this is your last estimates hearing. I again place on the record our thanks for your cooperation over many years. I think there have been some hard times but there have also been some times when you have brought some light to what the AFP is doing on behalf of this country, both nationally and internationally. I understand that you wanted to make a closing statement. The committee invites you to do that.

Mr Keelty—If I may, Madam Chair. I am conscious of the fact that it has been a long day for the people here. My plans to get out by 9.15 have failed dismally. We have other agencies waiting to come in.

CHAIR—You can take your time. We are happy to stay until 11 o'clock. If your statement needs to go for eight hours make the most of it.

Mr Keelty—I simply wanted to say, Madam Chair, that I have been coming to this committee for over 10 years now, since the days of Barney Cooney and Jim McKiernan, who stayed in touch with me for many years afterwards. This committee has been an important committee to me, to the AFP and its accountability. I wanted to pay tribute to Senator Marise Payne, the former chair, and to Minister and Senator Joe Ludwig for the interest that they showed in the AFP which was recognised by the organisation. Like many people on this committee, they have turned up to many AFP matters that were of interest to the committee. We opened up our doors to transparency and accountability. I appreciate the fact that committee members have taken the time to take advantage of that.

Senator Chris Ellison, our former minister, quite often was an advocate for the AFP. He travelled many miles from Perth and back on each and every occasion. Senator, I wanted to make the point that a lot of the deliberations in the committee I hope in my time have been taken in the spirit with which they have been intended. Police officers at the front line make spontaneous decisions based on the circumstances that they face. Courts, and indeed committees such as this, spend hours and sometimes days and months deliberating on those spontaneous decisions. Not once in my career have I accepted any sort of corruption or excessive use of force. Thankfully, the committee and those who have criticised the AFP in the past have rarely ever raised those issues.

I simply make the point that just like this committee we need good people in public office. It is easy to criticise people. We do not want a culture where people are paralysed into inaction because they fear criticism. I pay tribute to the people on this committee, to the secretariat and to the Hansard reporters for the work that they do. In this role I have heard a great deal of bad news around the world about bad democracies and about democracies that do not work. The work done by the people on this committee, in the Senate and in the parliament generally is not accepted for what it is. I pay tribute to you all, wish you the best for the future, and commend you on your excellent work. Thank you.

CHAIR—Thank you, Commissioner. On behalf of Senator Marise Payne, former chairs and former members of the committee, we wish you all the best on your travels. As one door closes, many more will open. I am sure it will not be the last that we hear from you. If I take what you said accurately does this mean that you will be a champion of the Senate when you leave your post? These days we probably need a few friends out there. The Senate is always

criticised, but it is nice of you to recognise the work that we do. Similarly, the work done by the AFP and your cooperation with our numerous inquiries has assisted us in writing our reports and in coming to the conclusions that we have over the years. Thank you very much.

Mr Keelty—Thank you, Senator.

CHAIR—I think Senator Barnett wanted to say something and we will finish with Senator Ludwig.

Senator BARNETT—Thank you very much, Madam Chair. As a Deputy Chair and former chair of this committee I would like to associate my remarks and those of coalition senators with the remarks made by the Chair and thank you for your service. As I said this morning in my opening remarks, we applaud your efforts and thank you for your service. We know that you have many months to go—I think until September or thereabouts—so we thank you for that and the service that you offer to the nation, which is greatly appreciated.

We note your comments about the spirit of cooperation and the manner in which we operate in this committee. We note that that is the manner in which we undertake our questioning and our efforts on behalf of our constituents. I will pass on your remarks to both Senator Payne and former Senator Ellison, who no doubt will be appreciative of your comments.

Mr Keelty—Thank you, Senator.

Senator Ludwig—Thank you, Madam Chair. On behalf of the government, I recognise the service of Commissioner Keelty. He has done an outstanding job during the period in which I have known him—almost since the time that I became a member of the Senate. His appointment as commissioner preceded my election as a senator by about six or eight months. The government congratulates Commissioner Keelty on his long record of public service—something in the order of 35 years. It is exemplary service. He deserves our well wishes and, of course, we wish him well in his retirement, or in his next career.

Commissioner Keelty has faced many challenges over the past 10 years, and I will mention just some of them. There have been some high points, some low points and some challenging points. They stretch from the challenges from September 11 2001 to the Bali bombing, the Jakarta embassy bombing, the Indian Ocean tsunami and the 2003 Canberra bushfires. Commissioner Keelty was also involved in the National Police Memorial. He has been involved in all of those matters, and has dedicated his work and the efforts of the Australian Federal Police to achieving good outcomes for the Australian public. The government thanks him for that.

During that period there was a substantial increase in the Australian Federal Police. Its changing character and nature during that period were led by a very competent minister in Minister Ellison. I want to recognise his service. I think he worked well with Commissioner Keelty. I spent a significant amount of my time trying to unravel that. Clearly, I did not succeed in that effort!

I also add that Commissioner Keelty has demonstrated excellent leadership in the circumstances I have outlined, and in many others that I have not touched upon, which we will recall and which Commissioner Keelty will take with him into retirement. In a very

challenging environment he has worked with a team of dedicated professionals in a flexible manner. We wish him well. I personally thank him for our friendship during those 10 years.

Mr Keelty—Thank you, and good luck to you all.

[2.55 pm]

Australian Customs and Border Protection Service

CHAIR—And good luck to you, Commissioner. We will now move on to the Australian Customs and Border Protection Service. Do you wish to make an opening statement?

Mr Carmody—No, thank you.

CHAIR—We will proceed to questions from Senator Brandis.

Senator BRANDIS—I am happy to start. I take you to Budget Paper No. 2, pages 100 and 101. At the foot of page 100 and then on page 101, there are three budget measures each relating to customs and described respectively as ‘risk based approach to air cargo inspections’, ‘first port boarding inspections’ and ‘sea cargo inspections’. Can you define what the expression ‘first port boarding inspection’ means?

Mr Carmody—That is the program of boardings that we have for vessels arriving in Australia.

Senator BRANDIS—At their first point of arrival?

Mr Carmody—Yes.

Senator BRANDIS—What is the distinction between first port boarding inspections and sea cargo inspections?

Mr Carmody—Sea cargo inspections are the inspection of container cargo and other cargo that arrives on vessels.

Senator BRANDIS—But it is different from the first port boarding inspection.

Mr Carmody—First port boarding is principally about the crew and other issues.

Senator BRANDIS—I see. What does the expression ‘risk based approach’ mean in each of these items?

Mr Carmody—At a broad level we have reviewed programs of inspection of cargo and also in relation to first port boardings to determine whether we are using resources in the most efficient and effective manner. We have had some years of experience with these and we have analysed the results we have achieved, the increased targeting and the intelligence capability that we have had. We believe that we can achieve effective outcomes for the community in a more efficient way which sees a reduction in the volume of inspections but also sees us managing risk by a combination, principally in the cargo area, of particular intelligence and targeting led inspections and examinations. That is backed up by a coverage target that gives us a bit of feedback on the effectiveness of our intelligence and targeting interventions. Also, to add an element of unpredictability and surprise to our activities, we have had a series of campaigns that might focus on particular risk areas.

Senator BRANDIS—So, in respect of each of these categories of inspection—air cargo, first port boarding and sea cargo—there will be fewer inspections than there have hitherto been.

Mr Carmody—Fewer in volume, yes.

Senator BRANDIS—Fewer.

Mr Carmody—Yes.

Senator BRANDIS—Taking each of those three categories, the government has decided to reduce spending on air cargo inspection by \$17.1 million over four years. In absolute numbers, approximately how many fewer air cargo inspections will there be each year than there have been hitherto?

Mr Carmody—On air cargo the number of consignments reduced from 6.2 million to 1.5 million.

Senator BRANDIS—Did you say that the number of consignments inspected in each year will reduce from approximately 6.2 million at the moment to approximately 1.5 million?

Mr Carmody—That is true.

Senator BRANDIS—In relation to first port boarding inspections—the same question—the budget measure proposes cuts. Approximately how many fewer first port boarding inspections will there be each year in comparison to the number there have been hitherto?

Mr Carmody—This is in the first hour of boarding. Of course, we do have other programs beyond that first hour.

Senator BRANDIS—I am going to ask you about other programs, but I assume that these words have been used in this measure for a reason, and that is because they have a specific definition, which is why I asked the question.

Mr Carmody—First port boarding and the figures I am quoting, which relate to one hour of arrival—

Senator BRANDIS—Are you comparing like with like? It is not as if the definition of first port boarding has changed, is it?

Mr Carmody—I would not seek to mislead in any way. I am comparing like with like. It has been a variable program, but it is around 8,600—it has sometimes been higher in past years—to about 6,450 vessels per year.

Senator BRANDIS—So the 8,600 is the number of vessels.

Mr Carmody—Yes. It has varied between 8,600 and 9,200 or something like that. The figure has been flexible. As a target—

Senator BRANDIS—Over what period? Can we take a stab at 10 years?

Mr Carmody—I cannot go back 10 years.

Senator BRANDIS—Rather than muck around, why not read onto the record the numbers in each of the years for which you have figures? What did you say was the projected figure?

Mr Carmody—6,450.

Senator BRANDIS—Right. Can you read out the figures for the years you have?

Mr Carmody—I only have the target figure, which is between 75 per cent and 80 per cent of vessel arrivals. That was the target figure previously. The only figure I have is for 2008-09. I believe that target was between 8,600 and 9,200.

Senator BRANDIS—All right, and you have no reason to believe that that target was not met within that range?

Mr Carmody—We are at the lower end this year, struggling a little bit mainly because of increased cruise arrivals, which is stretching us.

Senator BRANDIS—Are these cutbacks to first port boarding inspections expressed as a reduction also in the target percentage?

Mr Carmody—No, the reductions are based on the fact that our intelligence, profiling and analysis of these vessels suggests that we can be effective with the reduced rate. Many of the vessels were repeat arrivals with the same crews, yet we were following the same targets.

Senator BRANDIS—Just changing the target, in effect?

Mr Carmody—The target has been reduced to 6,450.

Senator BRANDIS—The target has been reduced to 6,450. Okay, that is fine. I refer now to the third cutback. This is the very big cutback of \$34.4 million over four years. What is the approximate number of sea cargo inspections that you will be able to undertake each year with these cutbacks?

Mr Carmody—These are always measures in what are called TEUs, which are 20-foot equivalent containers. There are some containers that are larger, but we reduce them all to 20-foot equivalent. The targets are at two levels in our portfolio budget statements. One is inspected, which can be putting them through the x-ray and so on. It was target of 134,000 in 2008-09, and the new target under our new approaches will be 101,500, and the number physically examined—that is where we unpack—

Senator BRANDIS—That is service at a higher or more intense level?

Mr Carmody—Yes. That was 14,300 in 2008-09 and the new target is 14,000. It is a minor reduction in that more intensive examination.

Senator BRANDIS—May I apprehend that cargoes that are subject to the more intense physical inspection are cargoes where, for reasons of intelligence or for other reasons that have come to your knowledge, there is an enhanced attractiveness in physically searching that cargo. In other words, the element of randomness with inspections like that is not as significant as the element of randomness with the less intense inspections.

Mr Carmody—It is not random.

Senator BRANDIS—It is not random at all?

Mr Carmody—Where we attach priorities to containers and where we have a high priority basis of intelligence or profiling, they are examined. That will continue to be case under the revised arrangements.

Senator BRANDIS—So, you physically inspect cargoes when you have reason to believe you might find something?

Mr Carmody—We have what is called ‘priority one’, where we have strong concerns. That does not translate into all of those we find; in fact, in a very small proportion of those do we find items of concern. I do not want to go too much into our basis for selecting because I do not want to communicate that to those who are seeking to breach our borders.

Senator BRANDIS—I am not asking you to do that.

Mr Carmody—But we do profile all cargo coming into the country. Those where we have a high level of concern, yes, we will examine them. We will continue to do that under the revised arrangements. But I also point out that in only a very small proportion of those do we actually find anything of concern.

Senator BRANDIS—I must say it alarms me. Although the projected reduction in the aggregate numbers of the physical inspections from 14,300 to 14,000 is in fact the slightest reduction in the number of inspections in any of these cutbacks, I still think the public would find it very alarming to know that there are even 300 cargoes about which customs entertain a high level of concern which as a result of these cutbacks will go uninspected. Notwithstanding that, as you properly allow, these inspections more often than not do not disclose a breach—

Mr Carmody—Let me ease your concerns, because I would not want you to have them. The figure of 14,000 is just a projected number. Where there is this level of priority and concern we will continue to examine. If the figure turns out to be a bit more, it will be a bit more. If it turns out to be a bit less, it will be a bit less. There will be no change in our examination of those high priority concerns.

Senator BRANDIS—Other than that the projection is 14,000 and for the current year it is 14,300.

Mr Carmody—But the reality of examination will not change for high priority containers.

Senator BRANDIS—I refer you to x-ray inspection of these TEUs. How many state-of-the-art machines does Customs currently operate at Australia’s ports?

Mr Carmody—Someone might be able to give me the detail of that.

Mr Mann—We have container x-ray facilities—

Senator BRANDIS—What are they called?

Mr Mann—Container—this is a machine that can, without unpacking the container—

Senator BRANDIS—What is the machine called?

Mr Mann—We have container examination facilities that can scan an entire closed container in Brisbane, Sydney, Melbourne and Fremantle.

Senator BRANDIS—How many in each port?

Mr Mann—There is one X-ray machine that can scan a full container at each of those ports.

Senator BRANDIS—So we have four.

Mr Mann—And then we have pallet and other X-ray technology in Adelaide, Darwin and now in Newcastle, Townsville and at Bell Bay in Launceston.

Senator BRANDIS—Is the pallet examination equipment less sophisticated than the X-ray equipment?

Mr Mann—We have a range of container X-rays, pallet and then cabinet X-rays for smaller items. In those facilities that do not have the full container X-ray, we need to open the containers and then pull out either at the pallet level or at the consignment level smaller amounts of cargo to put through those other machines.

Senator BRANDIS—Was there any allocation in the budget for additional x-ray machines?

Mr Carmody—A program was announced in the last budget for those four extra ports, and they are being implemented this year.

Senator BRANDIS—Are those the pallet machines?

Mr Mann—They are additional cabinet X-ray machines.

Senator BRANDIS—They are small ones?

Mr Mann—Yes.

Senator BRANDIS—And they cannot X-ray the TEUs?

Mr Carmody—No. That means we unpack to the package level and put them through in that way.

Senator BRANDIS—Which is a more time-consuming process. What percentage of container cargo that comes into Australia comes in as TEUs rather than as cabinet sized cargoes?

Mr Mann—The cargo that we are talking about here is generally all containerised cargo.

Senator BRANDIS—And you have four X-ray machines that can X-ray TEUs?

Mr Mann—Yes.

Senator BRANDIS—Did customs seek an appropriation from the government in this budget for additional X-ray machines?

Mr Carmody—No, we did not.

Senator BRANDIS—Do you feel that your current capability is sufficient?

Mr Carmody—We believe that the basis on which we have determined—which is risk based backed up by coverage and campaigns to provide a bit of disruptive influence—is an effective strategy in this area.

Senator BRANDIS—This risk based approach does not tell us very much. It leaves out of account any element of qualification of the risk. You could have a risk based approach which quantified a high level of risk and, therefore, a high level of inspection, or a risk based approach which accepted or tolerated a different level of risk and had a different level of penetration or coverage of the inspection. To say you have a risk based approach really leaves out the only variable that tells us anything, doesn't it?

Mr Carmody—No, it does not. In fact, the largest number that we will inspect are ones where we do not have a high-priority view that there is anything wrong with them. That gives us the basis on which to measure the effectiveness of our risk based approach. If we need to modify it and issues come out of that then we will raise them with government.

Senator BRANDIS—And if you do, it depends on the government rescinding the cutbacks as to whether or not you get satisfaction.

Mr Carmody—Yes, but the analysis that we have done to date leaves us confident that this is an effective strategy that is backed up by coverage to enable us to measure its effectiveness. As I said, even more flexibility and a campaign approach lead to more uncertainty in the marketplace.

Senator BRANDIS—I am sure it is an effective strategy within the limitations of the resources that the government has given you. I am sure that you and your officers have made the most of the resources that have been given to you to develop the most effective strategy you can. But that does not conceal the fact that the resources given to you have been reduced in these three measures by more than \$57 million.

Mr Carmody—That is true. But, if you look at it more broadly, it is always a balance. We can never examine every cargo container.

Senator BRANDIS—Theoretically you can.

Mr Carmody—We could, but that would slow down trade in this country and put our economy at risk. Those are the sorts of balances you are continually looking at.

Senator BRANDIS—Of course it is a balance. It is a question of priorities and what priority is placed on customs inspections. You are a bit of a price-taker in this because you are at the end of the process. Whatever resources the government chooses to give, I am sure that you and your officers are highly skilled in making the best strategic assessment about how to use them most effectively. But let us not be diverted from the fact that you are making those assessments against a background of reduced resources.

Mr Carmody—Thank you for the compliments to my officers. I point out again that our approach is based on some years of experience of the strategies.

Senator BRANDIS—We have been doing customs in this country since 1901.

Mr Carmody—Indeed. But I am sure we did not have X-ray facilities then.

Senator BRANDIS—In fact, I think I am right in saying that the Customs Act was the first act of the Commonwealth Parliament.

Mr Carmody—Was it? I do not know.

Senator BRANDIS—I think I am right in saying that. Turning from that, I take you to table 22.1 on page 119 of the PBS, which is at the foot of the page. The reduction in your resources is reflected in a reduction in the number of staff. You will see it on the last line in the table: average staffing level has gone from 5,720 in 2008-09 to 5,500, a reduction of 220. Do you see that?

Mr Carmody—Yes.

Senator BRANDIS—Other than the reduction in the number of inspections that customs is undertaking, what services or activities of customs have been cut back?

Mr Carmody—First, 200 in an organisation of 5,720 is not a large reduction, as I am sure you understand.

Senator BRANDIS—Mr Carmody, please—

Mr Carmody—I just wanted to put general context around that.

Senator BRANDIS—The figures speak for themselves. It is 220, not 200. You are like the Prime Minister, who is unable to utter the word ‘billion’. This seems to be a disease that propagates from the top of the Rudd government as a fish rots from the head. It is 220, not 200.

Mr Carmody—I apologise, 220. The only thing I can guarantee is that at the end of the year it will not be 220, because these are average figures across years.

Senator BRANDIS—They are figures that are put forward—

CHAIR—Mr Carmody, you had additional information you wanted to provide.

Mr Carmody—I just wanted to point out as general context that those figures are the product of a range of initiatives, including the ones we have already spoken about. They are a product of some increases in resources that we have received. They are also a product of the general efficiency dividend, which has been around for many years. They are also a product of our requirement, which has also been around for many years, to fund pay rises out of efficiencies.

Senator BRANDIS—At this rate, in years to come you will be so efficient that you will not have any staff.

Mr Carmody—We have to be efficient and effective.

Senator BRANDIS—Indeed.

Mr Carmody—Most of the issues I have spoken about relate to improved efficiencies. We are not looking to necessarily reduce any outcomes, any effectiveness or any efficiencies.

Senator BRANDIS—I am sure you are not looking to do that. As I said before, I am sure that with the reduced resources the government is giving you, you and your officers are doing everything you can to produce the most efficient outcomes possible. I do not cavil about that. I want to know what reductions, if any—other than the reduction in the number of inspections of which we have already spoken—Customs has made to any of its programs as a consequence of these cutbacks, both in budget allocations and in staff.

Mr Carmody—Again, if you go through the portfolio budget statements, I do not think there are any particular reductions in the outcomes other than the ones we have mentioned—

Senator BRANDIS—Not outcomes. I have been doing this a little while now and I know the difference between outcomes—

Mr Carmody—You are ahead of me. I do not know what you are going to ask.

Senator BRANDIS—I want to know what, if any, other programs or activities have been cut back or reduced.

Mr Carmody—I have tried to explain that a lot of this is about more efficient and effective delivery of what we do. Efficiency requirements that have been in place for many years have been a significant contributor to this. We are continuing with our strategy of ensuring that highest proportion of reductions is in our corporate support areas. We did that last year.

Senator BRANDIS—Tell us about that.

Mr Carmody—About 80 per cent of the reduced staffing this year was as a result of a review of our corporate support areas. That continues to be projected for next year. So we expect to see a reduction of around 60 FTEs. Again, these are average figures. As you know, with averages you start in one place and end in another to get an average. So I need to point out that the actual staffing levels at the end of the year are not equivalent to those averages. However, in the interests of having a consistent basis, a further decrease of 60 FTEs is projected over the year in what we call our people and place areas. They have been the focus of review. Senator, I think we provided you with a report from a consultancy we had undertaken that demonstrated there were significant efficiencies to be obtained there. We are continuing those consolidation and business efficiencies in those areas. In our border enforcement program, you know that we have passenger and trade facilitation, border enforcement and others. The average FTEs in our border enforcement area will remain the same over the year.

In our passenger and trade facilitation area, there is a 160 FTE reduction on average. Part of that has to do with the issue that we have talked about—cargo examination. Part of it is also in our passengers division, where we have a large number of resources, and we are looking to achieve efficiencies through tighter revision of our deployment to workload demand, revision of roster arrangements, reduction requirements for overtime and further exploration of the mix of full-time and part-time staff. They are the areas under our broad programs where reduction in average FTEs is occurring. They are the sorts of measures that we are taking to deliver efficiencies.

Senator BRANDIS—That is always the sort of measure that public servants who are good at their job implement when the government gives them less money.

Senator Ludwig—It is not actually correct that the government is giving them less money. The 2009-10 appropriation funding for the entire Australian Customs and Border Protection Service is larger than any previous year, being \$1,020.5 million. As I indicated, the 2009-10 federal budget includes a commitment of \$654 million over six years for a comprehensive, whole-of-government strategy to combat people smuggling.

The Australian Customs and Border Protection Service budget includes \$405 million, comprising \$324.3 million for enhanced maritime border protection and surveillance, continued funding for the ACV Triton at \$54.3 million over two years, additional funding of \$240.7 million over five years for continuing Customs southern oceans satellite surveillance and law enforcement patrols, and additional funding of \$1 million in 2009-10 for investigating replacing options for the Bay class vessels. An additional \$6.3 million has been allocated over two years for 80 patrolling days for the *Oceanic Viking*, \$62.9 million for aerial surveillance, including an additional \$16.4 million over two years, two additional surveillance aircraft and \$46.5 million in continued funding for aerial surveillance operations.

I know you are looking for cutbacks, but the previous government—and I think it was in the annual report from the previous chief executive officer—cut the budget to the bone. This government takes border protection very seriously. We have sought to ensure that in addition we have retasked the Australian Customs and Border Protection Service as the lead agency dealing with disruption of people smuggling at sea. These are important initiatives. In addition, as the chief executive officer indicated, the change in FTEs has been predominantly in corporate operations, which is not a frontline staff area.

Senator BRANDIS—I am sorry, Mr Carmody, we have to have a message from our sponsor every now and again. Fortunately, not a soul in the world listens to Senator Ludwig when he makes these self-serving political advertisements. I will get back to the portfolio budget statements.

CHAIR—Senator Brandis—

Senator Ludwig—If we are going to engage in this banter—

Senator BRANDIS—Senator Ludwig—

Senator Ludwig—Senator Brandis, I take exception to that. It is not correct.

Senator BRANDIS—I will not withdraw it.

CHAIR—Order! Senator Brandis, the minister has the call. We have been cooperative most of yesterday and today. We will give the minister the chance to have his say, then you can respond.

Senator Ludwig—If you are going to mischaracterise your question, if you are not going to be specific in relation to questions and make broad statements, I think it is relevant for the minister at the table to correct the record to ensure that you do not mislead. I am sure that you would not want to mislead in asking a question that deliberately phrases it as cutbacks without the specificity that it deserves. If you want to go to a particular program and indicate that, fine. But if you are going to use the Australian Customs and Border Protection Service in the broad, then that is not correct and it is necessary for me in those circumstances to correct the record. But I do not want to take up your time more than I need to. In fact, I have been relatively silent for most of the past two days to allow you the opportunity to examine the budget, just as the other senators are also entitled to ask questions in this portfolio area. Estimates hearings are an opportunity for the opposition to ask questions of government, and we encourage you to do that.

CHAIR—We have made a decision as a committee to keep going until 4 pm and we will stop then for afternoon tea.

Senator BRANDIS—Given the amount of time the minister has gratuitously used, can I suggest we go until 4.10 pm?

CHAIR—I have not finished. I understand that some people in the room need to go to another meeting. At 4.15 pm we will reconvene with the Australian Commission for Law Enforcement Integrity. We will come back to the Australian Customs and Border Protection Service after their other commitments have finished.

Mr Carmody—I would like to clarify what was not understood. There was a thought that I may need to be at another meeting, but I do not, so you can stay with us if you want to.

CHAIR—If that is the case, we will break for afternoon tea now.

Proceedings suspended from 3.31 pm to 3.45 pm

CHAIR—I know we started our break a little bit past 3.30, so I will give everyone a couple of minutes to get settled again. Senator Fierravanti-Wells, are we just waiting for your colleagues to return?

Senator FIERRAVANTI-WELLS—I do not know.

CHAIR—That is all right. They probably think we will take the 15 minutes, which means we would not start for another minute or so. We will go to Senator Fierravanti-Wells for questions.

Senator FIERRAVANTI-WELLS—Thank you. I might start off, if I may, Mr Carmody. You were probably following some of the questions we previously asked Commissioner Keelty. Since Border Protection Command is the sort of lead in the setup, if I can put it that way, can you please take us through the agencies? There was some speculation about which agencies are or are not the in Border Protection Command or the People Smuggling Task Force or the Maritime Incident Management Group. Because you chair that, perhaps you might like to give us all the agencies, please.

Mr Carmody—The Maritime Incident Management Group is chaired through Border Protection Command, so I will ask Rear Admiral Du Toit to take you through some of the detail of that.

Senator FIERRAVANTI-WELLS—Thank you, Admiral.

Rear Adm. Du Toit—What I might just do up front is set the scene of what Border Protection Command is.

Senator FIERRAVANTI-WELLS—Thank you.

Rear Adm. Du Toit—The Border Protection Command has proceeded with the new arrangements in the border customs and border protection service. Effectively, Border Protection Command is a multi-agency operational authority, commanded by me as a serving Naval officer on secondment. I command both the Defence contribution to civil maritime surveillance and response, which is Operation Resolute, which encompasses the Army, Air Force and Navy. I also have command of the civil assets provided to me by the Customs and Border Protection Service.

The Maritime Incident Management Group effectively is chaired either by me or by my deputy. That is specifically there to deal with incidents that occur in the offshore maritime domain. In other words, if we intercept a vessel, such as a people smuggler or a maritime counter-terrorism incident offshore, it is for us to be able to coordinate with other government departments and agencies that might be involved in that particular incident.

Membership of the Maritime Incident Management Group effectively is the AFP; ASIO; Border Protection Command itself; Customs and Border Protection Service; Defence is represented; DSD, DFAT, ASIS, DIAC, ONA and PM&C, as well as ADGs—that is the

international law, normally—and we can also second other members to the Maritime Incident Management Group, depending on the nature of the incident, be it a maritime terrorism incident or a people smuggling incident.

In the case of SIEV36, about which a question was asked earlier, in addition to the normal membership of the group, we also co-opted AMSA, from a safety at sea perspective because we were dealing with the aftermath of a safety at sea incident; Health was involved as well because we needed to move people ashore as quickly and as expeditiously as possible to deal with the incident; and also Emergency Management Australia. That is the make-up and the arrangements for the Maritime Incident Management Group.

The final point I will make is that we do not meet automatically every time we have an incident that we are dealing with in the offshore maritime domain. We will do so only when we need to coordinate particularly in extraordinary circumstances. Quite often, things are routine and well and truly under control. We will talk to the various agencies both by phone and by way of a regular situation report in an email format. We will meet only when we need to deal with unusual circumstances.

Senator FIERRAVANTI-WELLS—And the national security under the organisation referred to under Prime Minister and Cabinet—is that the same or different membership there?

Rear Adm. Du Toit—No.

Senator FIERRAVANTI-WELLS—If you can help us, that would be good.

Mr Carmody—No, Senator. As you had discussion, there was a problem with the same name but a different task force. The Border Protection Command—

Senator FIERRAVANTI-WELLS—The People Smuggling Task Force, I think, Mr Carmody.

Mr Carmody—Yes. If I can just help: there have been changes in arrangements in the last little while. There used to be the old People Smuggling Task Force which was seen, from where I sit now, a bit of a combination of policy and incident management. As explained by the Rear Admiral, we now have a dedicated incident management group which meets not every time a vessel is intercepted, but when circumstances require that to occur—and that is responding to an incident. The other group that is now in the mix is as announced following the budget. It was announced that the government had established a dedicated border protection committee of cabinet. That is supported by a newly established Border Protection Task Force. Its charter is to driving the government's response to people smuggling, particularly around policy issues.

Senator FIERRAVANTI-WELLS—Okay. In an interview which Minister Debus gave on 20 April in answer to a question by Mr Jones, he stated:

The border protection command has standard operating procedures that have been obviously highly successful over some time.

Can you take us through what those standard operating procedures to which the Minister referred, and how they have been successful? Considering the number of boats that seem to be arriving, I question that success. Perhaps, Admiral, you might take that in two parts?

Rear Adm. Du Toit—Just coming back to the role of Border Protection Command, the Border Protection Command's role is to respond to incidents in our offshore maritime domain; in other words, I am not involved in any activities that might be happening overseas by way of interdictions or stopping the flow of people smugglers in this particular instance. I am not involved once people have been apprehended and handed over by Customs in the first instance to DIAC for processing. My role is to operate at sea using aircraft for surveillance to be able to firstly detect vessels and secondly to be able to respond on the water using patrol boats.

We are an intelligence and risk based organisation. In other words, we have a coastline of some 36,000 kilometres. Clearly, we cannot be everywhere at once. Even if we were to triple the number of vessels we had, we could not be everywhere at once. We need to be able to react firstly to intelligence reporting as to where we need to position our assets. We then need to be in a position to be able to intercept those vessels at sea and to be able to prevent not only people smuggling but also all maritime security threats to prevent our laws from being broken in our offshore zones.

Senator FIERRAVANTI-WELLS—What are the standard operating procedures? If I can put it this way, take us through the entrails of your response and the procedures that you adopt.

Rear Adm. Du Toit—Standard operating procedures can operate at various levels. It goes right down to patrol boats and vessels operating at sea. When they intercept a vessel, they will need to go through their standard operating procedures. In other words, they go through what they are trained to do and what their procedures are to enable them to deal with illegal fishers or people smuggling ventures. I do not quite understand the nature of your question, Senator.

Senator FIERRAVANTI-WELLS—I am quoting the minister to whom you report. I am asking you because the minister said:

The border protection command has standard operating procedures that have been obviously highly successful over some time.

I am asking what those standard operating procedures are, and how they have been successful over time. Admiral, I am asking you the question that your minister answered in response to Tony Jones.

Rear Adm. Du Toit—Border Protection Command has been operating for a number of years, both under the current government and under the previous government. We operate, we conduct surveillance and we conduct interceptions at sea. That is our standard operating procedure for doing our day-to-day business irrespective of whether that is in the case of maritime people smuggling, illegal foreign fishing or maritime counterterrorism in our offshore spaces.

Senator FIERRAVANTI-WELLS—Perhaps Senator Brandis wishes to ask some questions on the standard operating procedures.

Senator BRANDIS—Rear Admiral Du Toit, what I would like to know is something I asked the AFP, who suggested that we direct our questions to you. Yes, Mr Carmody, it is a bit like that, is it not? That is the Rudd government for you.

CHAIR—Unlike the previous government? We could add that.

Senator Ludwig—I would have thought it was an improvement on the previous federal government, but there you go.

CHAIR—Senator Brandis, if you have a question, that would be helpful.

Senator BRANDIS—I was in the middle of asking it, Madam Chair, before we had this ejaculation from the table.

CHAIR—We will not have such sexist remarks!

Senator BRANDIS—In relation to the Maritime Incident Management Group, about which you have been speaking, I am interested in knowing from what particular sources the intelligence and information that come to it are derived. Of course, I do not want you to reveal any operational matters or intelligence—I think we all know the rules here—but what are the tributary elements that come to that committee, please?

Rear Adm. Du Toit—Senator, you might have missed my initial discussion of the Maritime Incident Management Group.

Senator BRANDIS—Yes, I was a couple of minutes late. I am sorry; perhaps you have already said that.

Rear Adm. Du Toit—No. It does not meet to consider intelligence. It meets to deal with an incident that has already occurred—in other words, we have intercepted a vessel and we need to coordinate the response between different government departments. It is not a body that meets to consider intelligence and enable me to array my assets to be able to deal with the threat.

Senator BRANDIS—I am sorry; perhaps we can shorten this. I think we are perhaps using the same word in slightly different ways. You act particularly when there is an urgent incident on information. I think I was using the word ‘intelligence’ merely to mean information about the incident. All I am interested to know is from what sources that information comes to you.

Rear Adm. Du Toit—That is not part of the Maritime Incident Management Group. As a matter of routine, we have a means to determine the nature of our threat—in other words, not only maritime people smuggling but across all the maritime threats. Based on the intelligence—and I am not prepared to go into the operational details here for obvious reasons—

Senator BRANDIS—No, I understand that.

Rear Adm. Du Toit—But based on the extant intelligence from all sources, we determine where we will best place both our surveillance aircraft and our on-water response capabilities across all of our maritime threats, one of which is maritime people smuggling.

Senator BRANDIS—Let us try and be a little less abstract about this. Let us talk about the specific SIEV36 incident. There was an ad hoc meeting of the Maritime Incident Management Group convened to deal with that incident, particularly the emergency off Ashmore Reef. That is correct, is it not?

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—And you attended that meeting?

Rear Adm. Du Toit—I did not. My deputy chaired two meetings on that day, one at one o'clock and one at 7 pm. That was specifically to deal with the aftermath of the explosion that occurred in the morning to enable the expeditious movement of people to the appropriate medical facilities as quickly as possible. That was the last meeting of the Maritime Incident Management Group to deal with that particular incident, because after that the Australian Government Crisis Committee kicked in. Once we had moved those people ashore that night, the incident in the maritime space had effectively come to an end, and it became a whole-of-government initiative to be able to move those people as quickly as possible to medical facilities around Australia. We then attended, as did the Customs and Border Protection Service, to the AGCC.

Senator BRANDIS—Admiral Du Toit, I do not want to cut you off, but I will ask you a series of narrow and specific questions in a particular sequence. Rather than have you make a statement about the issue in the broad, I think it would assist me and save time if you just responded to each question by answering that question and just limiting yourself to the specific question. But, before I do that, you said that your deputy chaired the two meetings to which you have referred. Is your deputy available?

Mr Carmody—He is not here.

Rear Adm. Du Toit—He is not here in the room, no.

Senator BRANDIS—Is he in the precincts?

Rear Adm. Du Toit—No, he is not.

Mr Carmody—He is in our office, Senator.

Senator BRANDIS—I see. Nevertheless, Admiral Du Toit, your deputy would have given you a very thorough briefing on those meetings. Do you feel able to respond?

Rear Adm. Du Toit—I will deal with your questions as best I am able to.

Senator BRANDIS—Thank you very much. I appreciate that. Who convened the 1 pm meeting and the 7 pm meeting?

Rear Adm. Du Toit—Border Protection Command.

Senator BRANDIS—Which individual? Did you order it to be done?

Rear Adm. Du Toit—Yes, I did, and my deputy convened it, as is the normal process if we intend convening a meeting.

Senator BRANDIS—When you convene what I will call an ad hoc meeting, if that is a fair description, that is a decision of yours, is it? It is not a decision that you run by a minister?

Rear Adm. Du Toit—No, it is an operational decision made by me, or my deputy if I am otherwise engaged.

Senator BRANDIS—Would you please describe the process for me? I assume you would just get in contact with the other participant agencies and tell them that in view of an urgent incident there is a meeting to be held at a particular place at a particular time.

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—And which agencies did you notify in relation to the 1 pm meeting, please?

Rear Adm. Du Toit—We invited the standing membership, which I have already been through for the record.

Senator BRANDIS—Just for my assistance—I am sorry that I was running a bit late—can you remind me of what they were, please?

Rear Adm. Du Toit—Sure: the AFP; AG's, and in particular their international law area expertise; ASIO; the Customs and Border Protection Service; DSD; DFAT; ASIS; DIAC; ONA; and PM&C. In this particular instance, noting the situation which occurred offshore, we also invited Emergency Management Australia, EMA; the Australian Maritime Safety Authority because of the safety of life at sea incident; and officials from Health.

Senator BRANDIS—Okay. In relation to the departmental representation for the Attorney-General's Department, PM&C, Health and DFAT, may I take it that those departments were represented by officers of the departments, not by ministerial staff?

Rear Adm. Du Toit—That is correct. It is an operational committee, and only officials attend.

Senator BRANDIS—So there were never any ministerial staff at these meetings.

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—Were all of the dozen or more agencies you have just mentioned present at the 1 pm meeting?

Rear Adm. Du Toit—I cannot confirm that. I will take that on notice.

Senator BRANDIS—To the best of your understanding they were?

Rear Adm. Du Toit—To the best of my knowledge they were all invited, noting that it was a short notice meeting. Agencies will do their best to be able to get there. I would assume that the majority of those agencies that were invited were in attendance.

Senator BRANDIS—And, because it was obviously a highly mobile and uncertain situation, that is why it was decided to meet again at 7 pm?

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—All right. Again, all the same agencies were invited, and you assume they would have attended?

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—Are minutes kept of these meetings, by the way?

Rear Adm. Du Toit—Outcomes are kept.

Senator BRANDIS—Is there a note taker there?

Rear Adm. Du Toit—There is, yes.

Senator BRANDIS—Who keeps the notes—which department or agency?

Rear Adm. Du Toit—Each department would obviously take their own notes.

Senator BRANDIS—Okay.

Rear Adm. Du Toit—But clearly we would take notes as the chair and as the convener of the Maritime Incident Management Group.

Senator BRANDIS—As the lead agency, you would take responsibility for whatever record keeping was required to be observed?

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—I assume those minutes are classified documents?

Rear Adm. Du Toit—That would be correct.

Senator BRANDIS—All right. Let us go through these one at a time. At the 1 pm meeting, what information did the committee or the group have before it?

Rear Adm. Du Toit—The standard practice for these meetings would be to provide a situation report.

Senator Ludwig—It seems to me if you are going to ask what the committee had before it in terms of documents, it starts to go into the area of briefings and operational matters. I only caution the committee that those matters are the subject of a longstanding precedent between both Liberal and Labor that we will not deal with the content of those or ask those types of questions, if they go to a description of the content.

Senator BRANDIS—I did not ask for the content.

Senator Ludwig—I do not want to limit your questions at all.

Senator BRANDIS—Thank you. But with respect, Madam Chair—

Senator Ludwig—I just felt it was necessary to mention it.

Senator BRANDIS—With all due respect to Senator Joe Ludwig from Queensland, Rear Admiral Du Toit might have a clearer sense of what is an impermissible operational matter in relation to a maritime security incident. Obviously I do not want you to reveal to the committee sensitive matters, but I would like to know what information, in a general way, the group had before it.

Rear Adm. Du Toit—Senator, at any of these meetings, if we called them, we would provide a situation report of what is occurring as we speak.

Senator BRANDIS—From whom would that come, by the way?

Rear Adm. Du Toit—It would come from Border Protection Command. I know that we have the chairmanship and we are responsible for the situation offshore. We would provide a situation report for people so that they would all be brought up to the same level that we would be at as to what was occurring. The purpose of the meeting is to then talk about how we coordinate between government departments to deal with that particular incident. That is what occurred on the day.

Senator BRANDIS—Thanks. That is very helpful, Admiral Du Toit. By the way, going back a step, you did not mention, unless I missed it, Defence as one of the participants.

Rear Adm. Du Toit—Yes I did.

Senator BRANDIS—Oh, did you? I am sorry.

Rear Adm. Du Toit—I did, yes. In addition to Border Protection Command being made up of both Customs and Border Protection Service and defence personnel, Defence are there in their own right.

Senator BRANDIS—Right. Defence is there and they are represented by the military arm of Defence; in other words, the service personnel, not the public servants—or both?

Rear Adm. Du Toit—No, both.

Senator BRANDIS—All right. Which of the defence services was present? Was it Navy?

Rear Adm. Du Toit—No, it is joint; in other words, military strategic commitments, which is manned by all three services, are normally the military representative on behalf of the vice-chief at those meetings.

Senator BRANDIS—On this particular occasion, which is the two 16 April meetings, which of the services represented Defence? Was it Navy?

Rear Adm. Du Toit—I cannot say. I will have to take that on notice.

Senator BRANDIS—I think somebody is trying to help you. If it helps, the AFP thought it was Navy, by the way.

Rear Adm. Du Toit—I guess it is immaterial because they represented Defence, not Navy, and they were representing the vice-chief. He will send a member of his staff according to who is available, particularly when you call a short notice meeting.

Senator BRANDIS—Admiral Du Toit, it is only immaterial depending on what interests you. It is material to me. Was it Navy?

Rear Adm. Du Toit—I do not know. I will take that on notice.

Senator BRANDIS—Thank you. I think you will find it was, and I will proceed on the assumption that the evidence from the AFP is reliable and that it was Navy. In relation to the situation report that was prepared by you or by your agency, may I take it that it was prepared in Canberra but on the basis of information received from the incident locale?

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—Did any of the other agencies, in particular the representative of the Defence Forces, also bring to the meeting their own situation reports or incident assessments?

Rear Adm. Du Toit—No. Border Protection Command, with responsibility for the incident in the offshore domain, provided the situation report as to what was occurring in the aftermath of the explosion. Our focus was clearly on dealing with the aftermath of the explosion.

Senator BRANDIS—Okay. That was the only incident report before the meeting, or at least in a physical form

Rear Adm. Du Toit—That is correct. [4.10 pm]

Senator BRANDIS—Thank you. Given, though, that the Australian personnel on the spot, as it were, were naval personnel, were they not, may I also take it that whatever situation

report was prepared under the supervision of your agency was a report which would have drawn upon information obtained from the naval officers at the incident?

Rear Adm. Du Toit—The Defence officers at the incident?

Senator BRANDIS—The Defence officers at the incident.

Rear Adm. Du Toit—I have two deputy commanders. One is civil and one is military. My deputy commander from the military perspective, as my deputy commander, Joint Taskforce 639, runs the tactical side of my operations. All the reporting to me is through him.

Senator BRANDIS—I imagine that is so, but I was really trying to get at something a little different. There were not actually Customs officers there when this happened, were there?

Rear Adm. Du Toit—No, there were not. However, Customs officers were involved. We have *Ashmore Guardian*, which is a Customs and Border Protection Service vessel that is also under my tactical control and which is at Ashmore Reef. They were involved subsequently in the aftermath of the incident.

Senator BRANDIS—Shortly thereafter.

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—Let us define what I mean by ‘the incident’. What I mean by the ‘incident’ was the conflagration, to use a neutral word, on the boat. At the time the conflagration occurred, for whatever reason, the only Australian personnel who were direct witnesses to this event happening were naval personnel. Is that right?

Rear Adm. Du Toit—No, that is not correct.

Senator BRANDIS—Well, who were they then?

Rear Adm. Du Toit—We had two naval patrol boats in the area.

Senator BRANDIS—Yes.

Rear Adm. Du Toit—But we have transport security elements, which were a force assigned to my operational control as well, and they could be Army and/or Air Force. In fact, I think on the day it was a mixture including Army and we also had an Air Force doctor who was embarking on the ships. So again, it was a joint operation.

Senator BRANDIS—Okay. That is very helpful. Thank you.

Rear Adm. Du Toit—Senator, just for the record, could I get back to you regarding the attendance at the Maritime Incident Management Group on that day?

Senator BRANDIS—Yes, yes.

Rear Adm. Du Toit—That was from military strategic commitments. As I said, they were represented and that was by Squadron Leader Matt Stuckless.

Senator BRANDIS—Thank you, Admiral Du Toit. So there were Australian Defence Force personnel from the three services in the vicinity when the incident happened. Correct me if I am wrong, but the Australian Defence Force personnel who were actually aboard the boat when the incident took place or immediately prior to the incident taking place were all naval personnel, were they not?

Rear Adm. Du Toit—No, they were a mix of the other services.

Senator BRANDIS—Oh, were they?

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—Okay. These personnel were from all three services?

Rear Adm. Du Toit—Yes, they were.

Senator BRANDIS—Thank you.

Rear Adm. Du Toit—Or at least from two of the services.

Senator BRANDIS—Okay. How many were there?

Rear Adm. Du Toit—As has been reported, there were nine Australian Defence personnel on board at the time of the explosion. Senator, I am just a bit concerned about getting into incidents here that could impact on upon the ongoing investigation. If you would allow me, I will be very careful in what I might say.

Senator BRANDIS—Of course, Admiral Du Toit.

Rear Adm. Du Toit—I certainly would not wish, in any way, shape or form, to compromise the ongoing investigation.

Senator BRANDIS—No, no. I would not want you to either.

Rear Adm. Du Toit—What I have told you so far has been out on the public record and is out on the public record. There were nine personnel on board.

Senator BRANDIS—This information that found its form in the situation report at the 1 pm meeting was information obtained by your officers from Australian Defence Force personnel who were witnesses to the incident. Is that correct?

Rear Adm. Du Toit—The information that was conveyed to participants at the Maritime Incident Management Group was nothing to do with the explosion itself. It was dealing with the aftermath of the explosion and the moving of those people ashore.

Senator BRANDIS—So you—or this group—did not have before it any information about the explosion itself other than the obvious fact that it had happened.

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—All right. Did the incident management group subsequently receive information about the manner in which the explosion had happened?

Rear Adm. Du Toit—No.

Senator BRANDIS—So your entire focus was prospective—to deal with a situation that had occurred and what to do about it, in particular in relation to people who had been injured.

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—There was no ex post investigatory function?

Rear Adm. Du Toit—There was not.

Senator BRANDIS—All right. Thank you. Between the 1 pm meeting and the 7 pm meeting, how had the situation changed, as reported to you at the 7 pm meeting?

Rear Adm. Du Toit—The situation really changed in that at the 1 pm meeting we were still looking at the best and the quickest means of being able to move people ashore. At that stage it was a safety of life at sea incident. That is why we had both Health and in particular the Australian Maritime Safety Authority involved. Between the one o'clock meeting and the meeting at 7 pm that night, the movement of people occurred through the Front Puffin, which is an offshore oil platform, and also the decision to take those who were less injured by ship to Darwin.

Senator BRANDIS—Was the decision about how to deal with the injured people made by the personnel at the incident, or were they decisions made on their advice by the incident management group?

Rear Adm. Du Toit—It was a combination. At the end of the day the incident management group was coordinating the agencies in Canberra. At the same time my deputy commander in Darwin, at the local level and working with the state authorities, was working for the reception of those people ashore and working the plan to be able to get them there as quickly as possible. So it was a combination of national and local level coordination.

Senator BRANDIS—Thank you. At what time was knowledge of the incident officially communicated to government? By 'government', I mean the political level of government.

Rear Adm. Du Toit—The incident occurred at 8.15 Australian Eastern Standard Time on 16 April. The first phone calls would have gone out within five to 10 minutes of that, I would imagine. I can get the exact time, but certainly at least by way of a telephone call. My normal procedure when any incident occurs there is that I phone both my Customs and Border Protection Service head, Ms Marion Grant, who is sitting on my right, and the Chief of Joint Operations, Lieutenant-General Evans, who is my military head. They respectively would pass it up the chain. In the case of General Evans, he would speak to the CDF. The CDF in turn would call the Minister for Defence. In the case of Ms Grant, she will speak to Mr Carmody. At the same time, that message would be pushed up to Minister Debus's office as well.

Mr Carmody—I just raise a point of clarification.

Senator BRANDIS—Yes, Mr Carmody.

Mr Carmody—I do not think that is exactly right. I received a phone call from the deputy, who is a Customs and Border Protection Service officer. He phoned me directly.

Ms Grant—Senator, the chronology that we have developed in response to this incident says that at 10.16 Australian Eastern Standard Time, Border Protection Command in Canberra advised several departments and agencies via email about the explosion.

Senator BRANDIS—Ms Grant, it probably would be very helpful and shorten things if you would read that chronology onto the record. If it is too long, perhaps you could furnish us with a copy.

Ms Grant—The chronology is quite lengthy because it commences at Wednesday, 15 April and expands over quite a number of pages until we go through to 14 May.

Senator BRANDIS—Ms Grant, I wonder if you would not mind having one of your assistants inspect that chronology to make sure there is no text in it that is unsuitable for

public release, and, subject to that, if we could have a copy of it provided to the committee, please? Could we do that?

Ms Grant—Yes, we certainly could provide a copy to the committee, Senator.

Senator BRANDIS—That is very helpful; thank you, Ms Grant. While that is being done, I will come back to you, Admiral Du Toit. You and Mr Debus had a press conference at 2.30 pm here at Parliament House, did you not?

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—And that was the first occasion on which there is an announcement to the public of this incident. Is that correct?

Rear Adm. Du Toit—I would need to check if anything went out earlier by way of press releases.

Senator BRANDIS—Would you check that, please?

Rear Adm. Du Toit—We will also look in the chronology, but I was certainly in attendance with the minister at a press conference that was called.

Senator BRANDIS—And he had just come back from the people-smuggling conference at Bali, had he not?

Ms Grant—Yes, he had.

Senator BRANDIS—In fact, there were several ministers, including Senator Evans, Mr Debus, Mr Smith and I think there were others as well at this people-smuggling conference in Bali. Admiral Du Toit, you are aware, are you not, that the information of the departure of this vessel, which came to be designated SIEV36, had come to the knowledge of Australian ministers and officials the previous day while they were still in Bali? Are you aware of that?

Rear Adm. Du Toit—I am sure they did.

Senator BRANDIS—Yes. In fact, at his press conference the previous day, Mr Smith was asked by a journalist, according to the transcript issued by his office:

There are reports coming in just now of a boat that was found off Ashmore Reef this afternoon with up to 50 people on it. Is that evidence of a continuing inability of both of these Governments to deal with this serious problem? And Minister Wirajuda, when do you expect to see the legislation that was promised by President Yudhoyono last year making people smuggling a criminal offence?

Then Mr Smith responds first, and he affirms that the report is true. Then he goes on with a bit of waffle about it being an international problem and so on. Was that information, which came to public light on the day before, 15 April, to your knowledge the earliest occasion on which the Australian authorities became aware of the presence of this vessel on Ashmore Reef? If not, can you tell me when that was, please?

Rear Adm. Du Toit—The vessel was apprehended the previous day, on Wednesday, 15 April, by HMAS *Albany*. That was put out in a press release. Obviously government was advised through the normal chain of the arrival of a vessel off Ashmore Island.

Senator BRANDIS—Before apprehension of the vessel by the *Albany*, when was it first detected?

Rear Adm. Du Toit—I am not prepared to discuss operational aspects, but obviously we monitor on a regular basis vessels that are out there. Quite frequently we would be aware of vessels for a reasonable period before we apprehend. In other cases, we may only have short notice of a vessel's arrival, particularly if it is un-alerted and we have not had any indications of its arrival. But I am not prepared to comment on those operational aspects.

Senator BRANDIS—Well, I am not going to ask you about operational aspects, but I am going to ask you about a date and a time. All I want to know is the date and time on which an Australian agency first became aware of the existence of this vessel.

Rear Adm. Du Toit—Senator, I am not in a position to answer that. I can answer only from a response perspective, at sea, that we apprehended the vessel on Wednesday, 15 April.

Senator BRANDIS—Do you not know the answer to my question?

Rear Adm. Du Toit—No, I do not.

Senator BRANDIS—Who tasked the *Albany* to apprehend the vessel?

Rear Adm. Du Toit—The *Albany* was our response vessel to Ashmore Island. The vessel was detected. I would need to check in this case whether that was by air or by the ship in question, and I will take that on notice. Sometimes we locate by air first. We then vector a vessel to do the on-water response. In other cases, the on-water vessel is the first to detect the vessel and then responds accordingly.

Senator BRANDIS—Was the talking of the *Albany* to apprehend the vessel an order or an instruction given by you? Was the *Albany* under your command, as it were?

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—So you gave the instruction for the *Albany* to apprehend the vessel?

Rear Adm. Du Toit—That is correct.

Senator BRANDIS—At what time did you do that, please?

Rear Adm. Du Toit—I would need to get the exact times for that. I do not have that with me at the moment.

Senator BRANDIS—Was that on 15 April or 14 April?

Rear Adm. Du Toit—It was on 15 April.

Senator BRANDIS—Morning or afternoon? I am sure you would be able to help me that far.

Rear Adm. Du Toit—From memory, I think it was morning, but I would need to confirm that.

Senator BRANDIS—There would be a note to your file on that?

Rear Adm. Du Toit—Yes, absolutely. I just do not have that with me today.

Senator BRANDIS—That is fine. You can take that on notice, and that is good enough for me. On the morning of 14 April, you gave the order to the *Albany*.

Rear Adm. Du Toit—No, the morning of 15 April.

Senator BRANDIS—I am sorry; I misspoke. On the morning of 15 April, you gave the order to the *Albany*. Did you give the order to the *Albany* pretty much as soon as you had satisfied yourself that this was a SIEV vessel?

Rear Adm. Du Toit—That is correct. Now, I make the point that I have the overall command of the vessel for the operation. The actual tactical employment of the vessel on my behalf is done through my deputy joint task force commander, who is based in Darwin. Basically, if a vessel is detected by aircraft, as in the normal course of events, the reports would come back with the report that suggests that the vessel is a SIEV. The order then would be to apprehend the vessel, based on the information available.

Senator BRANDIS—Putting all that together, you first become aware of the presence of this SIEV vessel in the vicinity of Ashmore Island on the morning of 15 April.

Rear Adm. Du Toit—Correct.

Senator BRANDIS—You pretty much straightaway make a decision to task the *Albany* to apprehend it, and that instruction is communicated through your deputy.

Rear Adm. Du Toit—That is correct, yes.

Senator BRANDIS—Mr Smith meanwhile, in Bali on the afternoon of 15 April at a press conference, indicates that such a vessel has been located. What time, local time, was the vessel in fact apprehended by the *Albany*?

Rear Adm. Du Toit—As I said, I do not have that at hand. I believe it was in the morning.

Senator BRANDIS—Could you take that on notice?

Rear Adm. Du Toit—I am taking that on notice and I will get back to you with that.

Senator BRANDIS—Then the incident occurred, as you said, on the morning of 16 April.

Rear Adm. Du Toit—Yes.

Senator BRANDIS—All right. Thank you. I have one last question about that before I move on. From what agency did the report come to you of the presence of the vessel on which you acted in tasking the *Albany* to apprehend it?

Rear Adm. Du Toit—If it was an aircraft that detected it, and I just need to confirm whether that was an aircraft detection, that would have been either an Air Force or a Customs and Border Protection Service aircraft, again under my operational control, so that would have come back to our tactical headquarters. If the aircraft detected it, then a vessel would have been sent to be able to respond on the water. If the vessel detected it, they would report back that a SIEV has been detected with so many people on board, and they would then be directed to apprehend the vessel. So it is as simple as that.

Senator BRANDIS—Sure, but which was it in this case? Was it an aircraft detection or a vessel detection?

Rear Adm. Du Toit—I will get that confirmation for you.

Senator BRANDIS—You do not know that?

Rear Adm. Du Toit—No. We have had a number of vessels recently. I just need to confirm whether it was an aircraft or vessel detection.

Senator BRANDIS—All right. If you would not mind confirming that, thank you.

Senator FIERRAVANTI-WELLS—Rather than going into the specifics of this particular incident, in terms of protocols and going back to the question about standard operating procedures, the protocols that are set out, would they include protocols for officers that are Navy or Customs officers when they spot a ship? I am now asking questions in a general context, if I could put it that way.

Rear Adm. Du Toit—Clearly, if it is an aircraft or a ship that is involved in operations, if an aircraft does a fly-past and there is a fishing vessel there, for example, and it does not have two or three people, as you might expect on a small fishing vessel, but 15, 20 or more people. It is quite clearly a contact of interest for us. We would task a surface vessel in that instance to be able to respond. They would conduct a boarding to ascertain the nature of the vessel. Clearly, based on that, a recommendation would be made as to whether it is people smuggling, as in this case, or a venture, for that vessel to be then apprehended. Those are the sorts of standard operating procedures that would be in place.

Senator FIERRAVANTI-WELLS—Are any warnings given to the skipper of the vessel? Is there anything in the protocols that deals with warnings?

Rear Adm. Du Toit—At the tactical level, there is a whole range of well-practised procedures when they board a vessel, what they communicate to the master of the vessel, what they communicate to the people on board the vessel and how they take that vessel into custody.

Senator FIERRAVANTI-WELLS—Are they told they are entering Australian waters illegally?

Rear Adm. Du Toit—Absolutely so.

Senator FIERRAVANTI-WELLS—Do the protocols go down to that sort of level?

Rear Adm. Du Toit—For example, a vessel that is apprehended and suspected of being involved in people smuggling, with potential asylum seekers on board, would be apprehended under the Migration Act. That would be communicated to the master of the vessel.

Senator FIERRAVANTI-WELLS—And the protocols cover how a boat is to be intercepted?

Rear Adm. Du Toit—Absolutely.

Senator FIERRAVANTI-WELLS—And the procedures that need to be followed. There are situation reports that are sent. Do the protocols set out standard reporting that must be done?

Rear Adm. Du Toit—Absolutely.

Senator FIERRAVANTI-WELLS—And the chain of command, and all those sorts of things.

Rear Adm. Du Toit—There is a full range of that both for my Defence assets and indeed for my Customs and Border Protection Service assets.

Senator FIERRAVANTI-WELLS—You are the first point of contact?

Rear Adm. Du Toit—It invariably comes up through my deputy military commander if it is a military asset. Quite clearly, if it is a Customs and Border Protection Service asset, it will come up through the civil chain. But I have the unified command of all.

Senator FIERRAVANTI-WELLS—The command of both of those categories.

Rear Adm. Du Toit—That is correct.

Senator FIERRAVANTI-WELLS—At a particular point, what is the chain of command normally? Do the protocols set out the information in terms of how this information normally comes out to the public and that sort of stuff, or how it is communicated to the minister's office? Leaving aside the specifics of this particularly incident, in general terms do the protocols cover that sort of thing as well?

Rear Adm. Du Toit—Yes, they do.

CHAIR—Sorry, Real Admiral, just before you answer that, it might also help if you clarify that as well as the chain of command there are different levels of interception, are there not?

Rear Adm. Du Toit—That is correct.

CHAIR—From my experience of my time on the patrol boat, you just do not pull alongside in a patrol boat, get on board and take command.

Rear Adm. Du Toit—No.

CHAIR—There are various levels and degrees of warnings, are there not?

Rear Adm. Du Toit—That is correct.

CHAIR—So when you answer that question, you might want to tell us who executes the various warnings until you get to the final stage of boarding the vessel itself.

Rear Adm. Du Toit—Yes, absolutely, and it depends. If it is a potential people-smuggling vessel, which we believe has potential asylum seekers on board, it needs to be within our areas in which we can enforce Australia's laws. We have various maritime zones. A vessel would need to be at the very least in our contiguous zone, which is between 12 and 24 nautical miles off our offshore territories, islands or in fact off the mainland. That is very clear.

If it is outside our 24 nautical mile zone, effectively they are in international waters, and no offence has been committed. Even though we might think that an offence could be committed in the future, they are not within our jurisdiction to be able to deal with that. Clearly, if we are going to interdict a vessel, it needs to at least be within that 24 nautical miles.

Senator FIERRAVANTI-WELLS—Thank you. Admiral, earlier you mentioned that the Maritime Incident Management Group meets ad hoc. It does not meet automatically. But did I understand you to say that there is communication continuously between its various components on a fairly regular basis?

Rear Adm. Du Toit—Only when there is an incident. For example, say we detected a vessel at three o'clock this afternoon, it was straightforward, we boarded it and there were no unusual circumstances surrounding it. The means would be communicating in the first instance by telephone to the key agencies, which I have been through as representing

membership of the Maritime Incident Management Group, and that would be followed up with an email which gives a dot point situation report, and we may do two or three of those until the people might be transferred to a means of moving them to, in this case, Christmas Island. That communication happens anyway. We would choose to convene a Maritime Incident Management Group only if there are extraordinary circumstances, as clearly there were on the day that we had the explosion on SIEV36.

Senator FIERRAVANTI-WELLS—Probably it is meeting a lot more regularly now, I would envisage. Does that mean that there is obviously feedback, if I can put it that way, from incident to incident? Does that exchange in terms of what may have occurred in one incident become an experience that may be gone through and serve to inform for the next incident, if I can put it that way?

Rear Adm. Du Toit—Senator, clearly we are a learning organisation at all the levels. That happens from the tactical level of ships and aircraft doing their daily business. We will always learn from operations. If there is any way we can improve our standard operating procedures, we will, and the same applies to the strategic level in Canberra in our dealing with other agencies and the way we deal with incidents. So, yes, we would always learn from incidents.

Senator FIERRAVANTI-WELLS—You mentioned that all these agencies are components of the committee. Does reporting to the various ministers occur through those agencies?

Rear Adm. Du Toit—That is correct. Each of the agencies that attend obviously would provide a brief back to their departments and ultimately to their ministers, as might be required.

Senator FIERRAVANTI-WELLS—So you, as the coordinating agency, are not responsible for communicating the information to all. If I understood your evidence correctly, you simply take notes of the tasks to be undertaken by whatever agency?

Rear Adm. Du Toit—That is correct.

Senator FIERRAVANTI-WELLS—You then follow up with that agency; for example, if DIAC or one of the other agencies has a particular task it needs to do, your responsibility is then to coordinate that happening—

Rear Adm. Du Toit—Yes.

Senator FIERRAVANTI-WELLS—rather than to inform any of the ministers.

Rear Adm. Du Toit—Yes, and it is a two-way street. For example, DIAC might say to us that, so they can prepare to receive people for processing, they would levy requirements on us as well. It is a two-way street, but while it is happening in the offshore maritime space we will coordinate that to make sure that we take on board the requirements of the various agencies.

Senator FIERRAVANTI-WELLS—I think you mentioned to Senator Brandis the incident reports or the paperwork associated with your committee. Can it be classified, or does it find its way into some sort of reporting? Is there any reason why the public should not know?

Rear Adm. Du Toit—It is classified and it forms our record as a time line for any incident that occurs, and we would then compile that.

Senator FIERRAVANTI-WELLS—The decision to make public any of the information is purely in circumstances at a particular point, and you decide to put it in the public domain?

Rear Adm. Du Toit—That is correct. In all cases, there would be an appropriate press release. We would take the facts based on the information we have that was deemed suitable for public release, and that would be put in the form of a press release, which in our case would go up through Minister Debus's office for release.

Senator FIERRAVANTI-WELLS—And your organisation is responsible for making that decision?

Rear Adm. Du Toit—Correct. We will draft the appropriate press release with expert staff on my team provided by the Customs and Border Protection Service, but those talking points, and indeed the press release itself, will be cleared by all the agencies involved in this space before it goes up to government.

Senator FIERRAVANTI-WELLS—Thank you.

Rear Adm. Du Toit—Madam Chair, just for the record, I said I would get back to Senator Brandis on the details. HMAS *Albany* detected that SIEV36. It was not an air detection; it was by the vessel. She was some two nautical miles south-west of Ashmore Island. That occurred at 10.19 Eastern Standard Time on 15 April.

Senator BRANDIS—Thank you, Admiral.

Rear Adm. Du Toit—Sorry, my correction: the detection was at 9.58 and the detection was reported at 10.19 Eastern Standard Time on 15 April. That was the first indication we had of that particular vessel.

Senator BARNETT—Rear Admiral or Mr Carmody, I note that the Customs Bay class vessels are coming to the end of their lifespan and I would like to ask you some questions about those vessels and the process for moving from them to whatever is in the future. I also am aware of two contracts that you have, one involving Jacobs Australia, who were paid \$1.2 million for ACV replacement professional services from 1 July 2008 to 31 July 2009, and Ernst and Young, who were paid for specialists for assessment and analysis of the replacement in relation to the ACV project from 4 June 2008 to 30 June 2008. Were those contracts used to consider the replacement of the Bay class vessels?

Mr Carmody—In the broadest sense we can get but, as you noted, they have a life, and they are coming up to a point when decisions need to be made about replacement.

Senator BARNETT—Can you be more specific?

Mr Carmody—In what sense?

Senator BARNETT—Well, about 'coming up to a point' and when they have to be replaced? Can you be more specific?

Mr Carmody—I cannot be specific down to individual years. However—

Senator BRANDIS—Are they fully depreciated, Mr Carmody?

Mr Carmody—Sorry?

Senator BRANDIS—Are they fully depreciated?

Mr Carmody—I would say they probably are. There are not a lot of dollars left on the depreciation side. But, as you no doubt commend, they continue to be very effective in their border protection role, Senator. Look, you can never be exactly sure. Our assessment is that we are at the point now, given the normal time frame in which to move towards replacement, that we need to be moving now. That is probably the most accurate answer I can give you. We have been doing work on potential replacements. These consultancies have been involved in assisting us doing this work. You will see there was announced in the budget \$1 million or something to replace them.

Senator BARNETT—I have \$1.1 million in my budget papers.

Mr Carmody—Yes. I am slipping, aren't I?

Senator Ludwig—I did not mention that.

Mr Carmody—I feel good. I have an extra \$0.1 million. That was announced in the budget to pursue the replacements.

Senator BARNETT—Let us go back to these two reports. What did they recommend? Do you have a copy of those reports?

Mr Carmody—I do not know that I have those recommendations.

Mr Perry—They are not providing specific recommendations in the Jacobs report. That is a project team that is part of our internal project team. We have gone to specific expertise to contract that in for the duration of the patrol boat replacement project.

Senator BARNETT—It is \$1.2 million. Has any brief been prepared by this consultancy document that was started in July last year? There must be something that has been prepared.

Mr Perry—Indeed. We are in the process of going through a two-stage capital acquisition process in a similar way that Defence projects have gone through a two-pass process for many years. The first stage of that process was considered by government in the context of this budget, and the outcome of that was the funding of that project team for a further 12 months while we compile the information to go to the second stage. That will be considered in the context of the next budget.

Senator BARNETT—Mr Perry, if you do not mind, I would like us to be a little more precise. Has a report been prepared and delivered to you as a result of that \$1.2 million consultancy which started in July last year?

Mr Perry—There is no report per se from that particular organisation. They provide specialised technical project services as part of our internal project team.

Senator BARNETT—What have they recommended about the replacement of the Bay class vessel?

Mr Perry—They have assisted in preparing the documentation that we put forward to government in the context of this budget.

Senator BARNETT—What advice did they provide?

Mr Perry—A range of technical services, specifically project management skills, engineering requirements, integrated logistic support information.

Senator BARNETT—I am happy for you to take it on notice, but we have a \$1.2 million project here. You cannot come here and say that it is airy-fairy stuff. We need specifics and we would like to know exactly what has come out of this project. Even if you have to take it on notice—I am not saying you have to go through the whole thing today—we would like to know.

Mr Carmody—We are quite happy to take that on notice and provide the answer.

Senator BARNETT—Thank you. I notice it concludes on 31 July 2009. Is that still correct?

Mr Perry—That work will be ongoing as we go forward to the next pass.

Senator BARNETT—Will there be a further contract? That contract is for \$1,215,110.13, according to the—

Mr Perry—That contract will be extended until we complete the project.

Senator BARNETT—So you will have a further contract, which will have further costs.

Mr Perry—That is correct.

Senator BARNETT—All right. Could you take that on notice and advise us of the new arrangements when they come into place?

Mr Perry—Certainly.

Senator BARNETT—The Ernst and Young project was \$150,000 and it was completed on 30 June last year. What did that say? Do you have an executive summary of that report?

Mr Perry—I will have to take that one on notice. What I am aware of is that we did get Ernst and Young to do some work on public-private partnership evaluations. We received a report from Ernst and Young on that but, again, I will take that on notice to confirm.

Senator BARNETT—All right.

Mr Carmody—We have to consider that these were inputs into submissions to government. We will have to take that into account in looking at those.

Senator BARNETT—Submissions to government are not an excuse not to provide these reports.

Mr Carmody—No. I am just saying it is against that background that these were prepared for us.

Senator BARNETT—Of course the only reason, if you are refusing, would be a public interest ground.

Mr Carmody—I am not refusing; I am just pointing that out.

Senator BARNETT—All right. We would like you, if you can, to take on notice a request for the report or the executive summary of the report.

Mr Carmody—Absolutely.

Senator BARNETT—Thank you. You mentioned the \$1.1 million that is allocated in the budget papers, as noted in the 2009-10 budget, to develop and manage a commercial tender process for options to replace the Bay class vessels. Can you tell us what options are being considered?

Mr Carmody—I think the issue is being developed to go out into the public domain. I do not know whether I can be any more specific about that. Obviously it is about replacement vessels, but until the processes go out I do not know whether I can—

Senator BARNETT—What are the main aspects or attributes of the new vessels for which you would be looking?

Mr Carmody—Obviously the attributes go to the ability—

Senator BARNETT—Apart from floating? That is a tick.

Mr Carmody—Yes. The attributes go to the ability to perform the role that we ask of our vessels in the maritime domain.

Senator BARNETT—Have you set the objectives and the role?

Mr Carmody—A range of those is being developed to go into the commercial documentation.

Senator BARNETT—We are trying to find out how far along the track you have gone to establish the options. Do we know what the options are or are you only at the beginning phase in developing the terms of reference? You have just been allocated \$1.1 million for this purpose. I would like to know how far along the track you are to replacing these Customs Bay class vessels.

Senator Ludwig—An irrelevant question, Senator. If they have finished one might wonder why they have the \$1.1 million to investigate the options.

Mr Perry—Senator, it is a two-stage process. We have gone through the first stage and we have gone to the government for initial consideration. There is some additional works that we have to do.

Senator BARNETT—When did that go to the government?

Mr Perry—In the context of this budget?

Senator BARNETT—When? Do you have a date?

Mr Carmody—We do not have a specific date.

Mr Perry—It was considered by a committee on 15 April. It was the allocation that you see in the PBS for \$1 million to the Customs and Border Protection Service and of that \$0.1 million is to finance the gateway review process. We will go back to government in the context of the next budget cycle for the second stage consideration once we have had an opportunity to go to the market.

Senator BARNETT—When do you expect to go to the market?

Mr Perry—We have some additional work to do before we are in a position to do that, Senator.

Senator BARNETT—Months or weeks?

Mr Perry—That will depend on whether the government is satisfied with the responses with which we come forward.

Senator BARNETT—When you go to market how long will that process take?

Mr Perry—The intention is that we will go for a request for proposals. That will need to be considered by industry for about 10 to 12 weeks. It will take us about six to eight weeks to evaluate the responses, depending on how many responses we get.

Senator BARNETT—It is helpful to know that. You are setting time frames for the different parts of this process before which time we cannot expect to see those replacement vessels. When is the government's response likely? Can the minister respond to that question?

Senator Ludwig—I can certainly take that question on notice. I do not have any personal knowledge in respect of that matter.

Senator BARNETT—Thank you. Let us move on. The budget papers note that the ACV *Triton's* lease has been extended to 30 June 2011. Has that vessel been given extra patrol days?

Ms Grant—Senator, no extra patrol days are involved with that vessel. It is an extension of its lease for another two years with the same quantum of patrol days.

Senator BARNETT—Do you have in front of you the number of patrol days per year?

Mr Perry—It is 240.

Senator BARNETT—There is no impact on the number of patrol days on the Customs and Border Protection Service's efforts to patrol our waters as a result of that?

Mr Carmody—As a result of that particular initiative, no. But there is as a result of another announcement in the budget.

Senator BARNETT—Do you want to alert us to that?

Mr Carmody—A decision was taken by the government to provide for an extra 80 patrol days for the *Oceanic Viking*, the Southern Ocean patrol vessel, in addition, without altering the number of patrol days allowed for the Southern Ocean. The government has approved the extension of the use of that vessel to provide for a further 80 days in the northern waters.

Senator BARNETT—We will come back later to the *Oceanic Viking*. I want to ask about an item on page 133 of the PBS where it is noted, under key performance indicators, that the number of apprehensions of illegal foreign fishing vessels in 2008-09 was 150. The government has lowered targets for the next four years merely to 60 apprehensions. What is behind that decision? What is the thinking or the rationale behind that? That seems to me to be a significant drop.

Ms Grant—Funding for the apprehension and the subsequent processing of the fishers from illegal foreign fishing vessels is adjusted every year in consultation with the Department of Finance. The target for 2008-09 was 150 vessels, but in light of activity to date the Department of Finance has agreed with us to reduce next year's target to that much lower figure, which reflects the level of activity that we are currently experiencing. But the

agreement is there that if the activity were to increase we could go back for more funding, in the same way that any funding we do not utilise this year would be handed back to the department.

Senator BARNETT—With the greatest respect, it does not make a lot of sense, Ms Grant. You had 150 apprehensions this past financial year and you are now projecting 60 apprehensions over the four-year period.

Ms Grant—Senator, 150 was the target for the year. We are well below the target at this point in time.

Senator BARNETT—What number did you achieve?

Ms Grant—At the end of April we had apprehended only 26 vessels.

Senator BARNETT—Are you disappointed with that result?

Mr Carmody—Certainly not, Senator. This is not a reflection of our diligence and capability; it is a reflection of the fact that policies have been successful in reducing the vessels intruding into our waters.

Senator BARNETT—Nevertheless, at the beginning of the year your target was 150 and from 1 July last year to April you have apprehended 26.

Mr Carmody—Again reflecting the activity on the water.

Senator BARNETT—Indeed, the level of activity. What cost was attributed to that service?

Mr Carmody—I do not know. Our patrol vessels and surveillance assets are used for a broad range of threats in our northern waters. I do not know whether we can provide an individual component for that.

Senator BARNETT—We would like to know whether this is as a result of some sort of resource contraction.

Mr Carmody—No, it is not a resource contraction. It is a reflection of the success of the strategies that have been employed in dealing with illegal foreign fishing.

Senator BARNETT—Mr Carmody, if it is not a resource contraction you can improve it. Tell us what resource was allocated for that service and what was used. Your target was 150 and you ended up with 26. What was your allocation?

Mr Carmody—I am having difficulty because what we use are surveillance assets and our patrol assets through Border Protection Command to deal with a range of threats in our northern waters. One of those is people smuggling, one of those is illegal foreign fishing and there are others. In recent times our flying hours have increased and our patrol assets have been at least as extensive and are increasing. It is a reflection of the fact that there is a reduced activity in foreign fishing.

Senator BARNETT—You are saying that there has been a reduced activity in illegal foreign fishing?

Mr Carmody—In foreign fishing.

Senator BARNETT—Over the last—

Mr Carmody—It has continued for some time.

Senator BARNETT—A reduction over a period of years?

Mr Carmody—I think two or three years ago it was a major issue and there has been a significant turnaround.

Senator BARNETT—What were the figures for the previous year?

Ms Grant—In the 2005-06 financial year we had 367 apprehensions. In 2006-07 we had 216 apprehensions. In the 2007-08 financial year there were 156 apprehensions. The number of vessels that are in our zone for us to apprehend is dropping significantly. In the initial year those 367 apprehensions seem to have made a big impact on illegal foreign fishers. It appears to have been a significant contributor to the deterrence of vessels entering our waters. We had only 26 apprehensions to the end of April, which means that we have a high percentage. We apprehend what is there and there are no more vessels there to apprehend.

Senator BARNETT—Do you know what percentage that is?

Ms Grant—I would need to take that question on notice.

Senator BARNETT—Can you guess or estimate the percentage?

Ms Grant—It is very high.

Senator BARNETT—It is a high percentage?

Ms Grant—When we find a foreign fishing vessel and we seek a response it is very rare that we cannot respond to one of those foreign fishing vessels. If there is a breach of the fishing laws, in the majority of cases we will make the apprehension.

Mr Carmody—You would be aware of the previous meetings where we talked about the whole-of-government approach to dealing with this issue. Just to reiterate, we believe that that approach has been successful.

Senator BARNETT—Would you take that question on notice and present us with the higher percentage?

Ms Grant—Certainly.

Senator BARNETT—That is fine; thank you very much, Madam Chair.

Senator BRANDIS—I have a couple of questions, Madam Chair.

CHAIR—I promised Senator Xenophon that I would let him ask questions. He has been waiting for over an hour.

Senator XENOPHON—I will wait. I am happy for Senator Brandis to ask questions.

Senator BRANDIS—Thank you, Senator Xenophon; that is very kind of you. I refer again to the staff cut of 220, Mr Carmody. I want you to tell me in which state or territory those staff cuts will take effect.

Mr Carmody—I do not have that detail available to me. I will take that question on notice. Again, these are average utilisations throughout the year.

Senator BRANDIS—Mr Carmody, take that question on notice, but I point out to you that last year I asked those questions of Customs in these estimates, and that information could be

provided by you or by one of the officers. When you know that opposition members have said something about this, it is not unreasonable to expect you to come prepared with details of where the staff cuts would take effect.

Mr Carmody—Okay, Senator. I have explained to you where the areas are and what will be the likely impact. I will take that question on notice and see what we can provide.

Senator BRANDIS—Thank you. Lastly, I refer to page 119 of the PBS, because we had some statements seeking to explain away these cutbacks. Outcome 1 on page 118 is referred to as follows:

Outcome 1: The protection of the safety, security and commercial interests of Australians through border protection designed to support legitimate trade and travel and ensure collection of border revenue and trade statistics.

According to your own mission statement, if I can use that expression, and the structure of the PBS, the performance of your agency and the priorities of the government relating to the accomplishment of that outcome are to be tested against the programs set out in furtherance of it. Would you agree?

Mr Carmody—Yes.

Senator BRANDIS—We can see from the PBS that there are five programs—passenger facilitation, trade facilitation, border protection and enforcement, civil maritime surveillance and response and border related revenue collection. Of course, each of those programs has a number of different elements and subprograms, but they are summarised in table 2.1 on page 119. Is that correct?

Mr Carmody—Yes.

Senator BRANDIS—In the first of those programs, passenger facilitation, there has been a reduction in resources of some \$15 million between 2008-09 and 2009-10. You will see in relation to the second of those programs, trade facilitation, that there has been a reduction in resources to that program of some \$19 million between 2008-09 and 2009-10. In the third of those programs, border protection and enforcement, there has been a reduction in resources to that program between 2008-09 and 2009-10 of more than \$7 million. There has been an increase in funding for the civil maritime surveillance and response function of some \$32 million between 2008-09 and 2009-10, and there has been a very slight reduction of some \$260,000 in the fifth program, border related revenue collection, between 2008-09 and 2009-10, producing the total expenses for the outcome indicated towards the bottom of the table. Across the five programs which service the outcome sought to be obtained by Customs, there has been a net reduction in funding of some \$4.6 million—from \$1,094.856 million to \$1,900.289 million. That is what the table says, is it not?

Mr Carmody—Yes.

Senator BRANDIS—Thank you.

Mr Carmody—I did explain the efficiencies that we were achieving within those programs to ensure that we continued to meet outcome 1 effectively. Thank you.

Senator XENOPHON—Mr Carmody, I refer to the issue of airport security. In May 2005 the *Australian* ran a front-page story following the leak of a Customs report prepared by then

Customs officer Allan Kessing into issues of airport security. That prompted the then government to order an independent review of airport security and policing which was prepared by Sir John Wheeler from the United Kingdom. That report was prepared and released in September 2005. Sir John Wheeler made 17 recommendations. Insofar as those recommendations relate to Customs, to what extent have those recommendations been implemented by Customs?

Mr Carmody—They have been implemented, but my colleagues can provide some of the detail.

Ms Grant—Senator, could I clarify the extent of your question? In response to the aviation security report, Customs undertook a range of activities and we have a lengthy list of initiatives that we put in place.

Senator XENOPHON—Referring to those initiatives, it would be satisfactory if you took that question on notice and provided a written response to it. I refer to some of the recommendations. For instance, a recommendation was made that there be information sharing between agencies, including Customs, the AFP, the states and territories and the private sector ‘to identify and remove elements that prohibit or inhibit the flow of information needed to counter crime and terrorism which threaten the aviation sector’. Has there been full communication between the various agencies that have responsibility for airport security?

Mr Carmody—I think the broader issue is the responsibility of the Department of Infrastructure, Transport, Regional Development and Local Government. Referring to the sharing of intelligence, we participate in and are a member of the joint airport intelligence groups and the joint airport investigation teams, so we have implemented those at that level. I think the infrastructure department is best placed to talk about the overall industry-wide joint efforts.

Senator XENOPHON—For instance, one of the recommendations that was made relates to the aviation security identification card. Sir John Wheeler made the following point:

Subsequently recorded convictions are not automatically alerted, and applicants with a pattern of criminality or with major criminal associations are not potentially denied access.

Mr Carmody—Again, I believe that the department of infrastructure is responsible for that.

Senator XENOPHON—What input does Customs have in ensuring the integrity of that card?

Mr Carmody—Senator, I cannot help you. As I said, the lead agency is the department of infrastructure. It would be best placed to answer those questions.

Senator XENOPHON—Would Customs be concerned about ensuring that people who hold an aviation security identification card are appropriate people to hold that card?

Mr Carmody—Yes, it is, Senator.

Senator XENOPHON—The way the card currently operates is that if, during the two-year period that you hold that card you are convicted of an offence, there is no way of knowing—unless someone has received a custodial sentence and that person has received a conviction for an offence—that that ought to preclude them from holding that card?

Mr Carmody—Senator, I do not know the detail or what backup arrangements are in place. I think it would be improper of me to offer an answer. I am happy to consult with the department of infrastructure and respond, to the extent that we can, on that issue.

Senator XENOPHON—You can see what systems are in place or are appropriate to determine—

Mr Carmody—Obviously we have concerns about what systems are in place.

Senator XENOPHON—Sure.

Mr Carmody—There is always a balancing act in implementing these sorts of controls. As I said, I do not know the specific detail and I am quite happy to raise it with the Department of Infrastructure.

Senator XENOPHON—You referred to a balancing act.

Mr Carmody—I am talking in broad terms about how far you go and how regularly you do these things.

Senator XENOPHON—Sure. I refer to what Sir John Wheeler said in paragraph 20 of his summary:

Among the Australian Customs Service's excellent capabilities is particular expertise in closed-circuit television (CCTV), and Customs should be the lead agency to improve the technology, integration, sharing and retention of CCTV data at all international airports, including associated domestic terminals, to deter and investigate crime and terrorism. Use of CCTV would be oversighted by the Airport Police Commander.

In relation to Sir John Wheeler's recommendation about CCTV—the integration—what has happened to that since September 2005?

Ms Kelley—Customs was provided with around \$47 million to enhance the airport CCTV network, to work with other agencies, such as the department of infrastructure, the AFP, and airport operators and users of airports, such as Qantas and retail outlets, to improve both the data sharing and the availability of CCTV to law enforcement agencies. We have increased the Customs CCTV capacity by over 200 cameras covering all the identified black spots, and we have provided digital video recording capability for these new cameras. There was also some additional staffing for our control rooms. We have also provided a CCTV consultancy service for airlines, airports and other organisations. We have established a national monitoring centre in Melbourne, and that now has access to data from three of our biggest airports—Sydney, Melbourne and Brisbane. We have also done some trials of some CCTV analysis tools. This project is ongoing.

Senator XENOPHON—So, from your point of view, the black spots that were identified in the Kessing reports and Sir John Wheeler's reports have all been plugged?

Ms Kelley—Yes, they have.

Senator XENOPHON—Is the system fully integrated now?

Ms Kelley—It is a fully integrated system within Customs. We maintain it as the Customs system, but there is capacity for other agencies to access the system as required.

Senator XENOPHON—Including the AFP?

Ms Kelley—Including the AFP. The AFP is probably the main agency that we work with around that access.

Senator XENOPHON—An incident occurred at Mascot on 22 March, and there was some criticism about the quality of the CCTV images. Was that your infrastructure or was it someone else's?

Ms Kelley—We need to be clear: our CCTV infrastructure is only at international airport terminals. That incident occurred at a domestic terminal.

Senator XENOPHON—That was not Customs' infrastructure. That sits at odds with what Sir John Wheeler recommended—that is, Customs should be driving that at international airports and associated domestic terminals.

Mr Carmody—Roxanne explained to you that the decisions that flowed from the Wheeler review led to specific initiatives agreed to by the government—I guess it was the previous government. In this instance, we received funding to undertake particular initiatives outlined by Roxanne. We have implemented what we were chartered to do as a result of the then government's consideration of the Wheeler review.

Senator XENOPHON—But, insofar as the Wheeler review made recommendations that there be CCTV in domestic terminals, that has not been carried out?

Mr Carmody—It has not been our responsibility to implement CCTV coverage at domestic terminals.

Ms Kelley—No. Part of that was about providing an advisory service, and that is available to a range of stakeholders.

Senator XENOPHON—Thank you. One of the other recommendations was that Customs officers be given clear and unambiguous powers, including to stop, search, detain and arrest, where necessary, within the airport and on adjacent roads and in parking areas. Is that currently the case as a result of the Wheeler review?

Mr Perry—Yes. These powers came into effect in August 2007 and gave Customs and border protection officers the power to stop, search, restrain, detain and remove people and vehicles pending the arrival of a law enforcement officer. Currently, we are working with the department of infrastructure, which is in the process of amending the aviation transport security regulations to prescribe the training requirements for our officers to exercise these new powers. We expect that to occur by the middle of this calendar year.

Senator XENOPHON—Thank you. I refer finally to an issue that I know is still before the courts. Mr Kessing is seeking leave to appeal his conviction in the High Court. In that case I think a report had been prepared. The allegation made in the media was that commercial considerations given in the chain of command were that these matters not be implemented because of the costs involved to the private operators of the airport. Mr Kessing was subsequently convicted of the unauthorised release of documents, a matter against which he is appealing. In relation to the culture of the organisation, if a Customs officer prepares a report in good faith and expresses concern about security matters and the safety of patrons at the airport, to what extent has the culture changed? Is that something that would be brought to your attention or brought to the attention of officers at a very high level to be dealt with? In

other words, somebody might prepare a considered report. It seems that Mr Kessing's concerns have been more than vindicated by Sir John Wheeler.

Mr Carmody—I do not know the specific details of Mr Kessing's report or whatever. But speaking at a—

Senator XENOPHON—It triggered the—

Mr Carmody—I understand. I am explaining my position. I was not around at the time. It would not be appropriate to go into those reports, anyway, as appeals are still going on. Referring to your broader question, we do regular intelligence reports on issues with which we are confronted. When a detailed report is prepared consistent with that, obviously they are considered.

Senator XENOPHON—Referring to the chain of command, if another Kessing-type report were prepared, how would you, as the chief executive, know about it? Is a protocol in place to inform you of something as fundamental as airport security?

Mr Carmody—As I said, these days we have a program to review issues and intelligence reports on particular vulnerabilities. That is quite a regimented process and those reports are dealt with at a very senior level. If it got to a question of a severe concern then, yes, it would be raised at the executive level.

Senator XENOPHON—You might want to take this question on notice. What criteria and protocols are in place in the event that a report is prepared down the chain of command expressing concerns about security? It could even be one Customs officer making an observation that he thinks some people need to be checked out further, or he might be concerned about airport employees comprising a security risk. What protocols are in place that are not varied to ensure that these issues are looked at thoroughly? The first Kessing report—I understand there were two of them—was buried for about three years.

Mr Carmody—I do not want to go into that, but I think that—

Senator XENOPHON—But it raises systemic issues, does it not?

Mr Carmody—Yes. I was talking about the specifics. Mr Buckpitt might be able to enlighten you.

Mr Buckpitt—Senator, we now have a protocol in place. When a report comes to conclusions of this sort they would be shared with the managers responsible for the area—in this case, the passengers area. There would be a conversation about the appropriate response. If there has not been an appropriate response, there would be an escalation to the executive. That would be fairly uncommon. Normally agreement would be reached about the appropriate response and that would be put in place in the report.

There is a broad communication process relating to intelligence reports. Normally a report is not confined only to a small audience; there are regular updates to executives and other managers on reports of this nature, so there is a broader understanding of the findings of intelligence reports throughout the organisation. The situation about which you are concerned—that there might be no response to a report—would be quite difficult because there is broader knowledge. A standardised protocol is also in place to ensure an appropriate management response.

Senator XENOPHON—If Allan Kessing wrote his report now for Customs what would be different from five or six years ago?

Mr Buckpitt—Over the past five or six years there have been a lot of changes to the way in which the intelligence function operates. A national program of analytical work is undertaken by the intelligence function, and that is much more visible to head office. The work that is being undertaken is truly a national program rather than lots of different reports being undertaken by intelligence officers all over the country.

Senator XENOPHON—Can I interrupt you for a moment? In this case the allegation is that Mr Kessing prepared the report, went to a supervisor, and it was buried. That is the allegation. What protocols are put in place if a report is buried? What mechanisms are there to ensure that a supervisor acts on it? If the supervisor fails to act on it, can the Customs officer, acting in good faith, bring it to attention of officers further up the chain?

Mr Buckpitt—A national program of work is being undertaken. It would be difficult to bury a document, to use the words that you used a moment ago, because that national program of work is much more visible. Within the organisation we now have an online publication of intelligence product. Unless it is highly classified it is unusual for a document not to be available to other officers with suitable security clearance. I mentioned the process whereby reports are shared with managers in other line areas that have an interest in their findings. It would be counter to the way in which we operate for us not to share a product with one of our clients. We do not generate reports only for the intelligence function; reports are produced for the purpose of sharing with the business areas.

Senator XENOPHON—If a supervisor or a person in the hierarchy to whom the report is provided does not act on it, is there anyone else to whom that Customs officer can go to with impunity, without fear of his or her career being damaged, to have it assessed and, if necessary, dealt with?

Mr Buckpitt—I should emphasise that the sharing of reports happens at a broader and more extensive level than has happened in the past.

Senator XENOPHON—With respect, Mr Buckpitt, that is not my question.

Mr Buckpitt—If there had not been an appropriate response, there is an opportunity to raise the response with the national manager of the function, with me, and with the business area. There are other management processes more generally relating to discussing the issue with intelligence planners to determine whether or not it is meeting the needs of the business areas.

Senator XENOPHON—Since the Kessing case has there been a change to the way in which reports are prepared—reports such as those prepared by Mr Kessing?

Mr Buckpitt—Yes, there has in relation to the extent to which it is published. It is now available to a much larger audience by virtue of our online publication. It is reported in the context of short extracts that go out to a much broader audience, so a larger number of people would be aware of it. It would be available to people at a number of levels in the hierarchy. These days there is a far greater dissemination of product than there might have been five or six years ago.

Senator XENOPHON—Is there a go-to person in Customs? If you are a Customs officer and you are not happy with the response, or you are concerned that the report has not been acted on or buried, can you go to a designated person?

Mr Buckpitt—The national manager, intelligence, is responsible to ensure that all intelligence products have been shared with the business area. If an analyst has produced a product and it does not receive an adequate response, he or she can go to that person, that is, the senior executive responsible for intelligence.

Senator XENOPHON—You are saying that if the Kessing reports were produced today they would have seen the light of day and they would have been acted upon. In this case we know that Sir John Wheeler vindicated the concerns of Mr Kessing in his reports?

Mr Buckpitt—These days the reporting that comes out of the intelligence function is much more broadly disseminated than it was five or six years ago.

Mr Carmody—I think what has been described as a comprehensive change in the way in which these things are done can give us confidence that any issues would be addressed.

Senator XENOPHON—Would you say that there had been a change in the culture, Mr Carmody?

Mr Carmody—I think all the steps to which Mr Buckpitt has referred reflect a change of culture and approach to these issues. There is a much more open nationally based and shared system of intelligence reporting. So, yes, I do perceive a change.

Senator XENOPHON—I take it that you are familiar with the broad content of the Kessing report, which relates to concerns about airport security?

Mr Carmody—Only at a very broad level.

Senator XENOPHON—Are you aware of the media reports?

Mr Carmody—Some media reports, but I do not want to be defensive about these, but there are—

Senator XENOPHON—You are aware of—

Mr Carmody—some things that are reported that I am not fully aware of, but I am aware of the broad issues.

Senator XENOPHON—You are aware that the Wheeler report was as a direct result of the media?

Mr Carmody—That is my understanding, Senator.

Senator XENOPHON—My question today is: if the Kessing report or something similar to it were produced, we would not have had the sequence of events that led to Mr Kessing's conviction for the release of unauthorised documents because of the changing culture?

Mr Carmody—I am saying is that they are reflected in the range of openness, the regimented steps, the protocols and everything else. A different culture and process are in place for managing these things, which gives me confidence that any issues raised would surface and be addressed.

Senator XENOPHON—Would it give you confidence that Mr Kessing would not have been dragged through the courts and convicted?

Mr Carmody—I do not know whether I could say that. Those are issues that go to court processes.

Senator XENOPHON—The way a report on airport security is dealt with goes to issues of process.

Mr Carmody—I have talked about the processing of reports. Mr Buckpitt explained that it is a different environment to the production of those reports. I do not want to talk about what might have happened to someone who is currently before the courts and who is appealing a conviction, if I can make that distinction. I know that I am being overly cautious. Talking about the issue of reports, I hope we have given you every confidence that reports will be properly approached.

Senator XENOPHON—Maybe we can talk about it again once his case has been disposed of by the courts. You might be less reticent then.

Mr Carmody—Okay. I am a very cautious person by nature, but I hope we have been able to convey the different environment and process that are in place these days.

Mr Buckpitt—I might mention that in 2006 an external review of the intelligence function within Customs was undertaken. That report signalled a number of directions for change, one of which relates to the dissemination of information. The sorts of changes that I have been talking about are in part reflected in that report.

Senator XENOPHON—Thank you.

Mr Buckpitt—I do not think there would be any problem in releasing a copy of that to you if you wanted to have access to it.

Senator XENOPHON—Referring to the other matters, I would be grateful to receive any information on notice.

Mr Carmody—Thank you.

Senator FIERRAVANTI-WELLS—Mr Carmody, I have some general questions relating to people smuggling. I am not sure whether you will be able to answer them, or perhaps we could again call on the admiral. The admiral took us through the entrails, if I can put it that way, of the Maritime Incident Management Group. Can you assist us by telling us the components of the Border Protection Committee of cabinet? Is your minister the lead minister for this committee?

Mr Carmody—Senator Evans chairs the Border Protection Committee of cabinet.

Senator FIERRAVANTI-WELLS—I will ask Senator Evans that question tomorrow but I do not want to go through what I went through last time when he sent me to another committee. I am asking that question now.

Senator Ludwig—I encourage you always to check, Senator—there is nothing worse. I have had that happen to me on a number of occasions. It is much better to ask and to get no response rather than not to ask.

Senator FIERRAVANTI-WELLS—What is the composition of the People Smuggling Task Force? Is Minister Evans the responsible minister?

Mr Carmody—Minister Evans chairs the Border Protection Committee of cabinet.

Senator FIERRAVANTI-WELLS—What about the task force?

Mr Carmody—The task force is chaired by the national security adviser.

Senator FIERRAVANTI-WELLS—Would I have to go to Prime Minister and Cabinet to get an answer to my question?

Mr Carmody—There is representation across a range of agencies, including my own.

Senator FIERRAVANTI-WELLS—Are you aware of its composition, or do I have to form a line to ask the minister?

Mr Carmody—I think I can help you with that, Senator.

Senator FIERRAVANTI-WELLS—Thank you.

Mr Carmody—The chair is the national security adviser and I am the deputy chair. Generally we have representation at deputy secretary level from the AFP, ASIO, AGD, Defence, DFAT, DIAC, Infrastructure, ONA, and Customs and Border Protection.

Senator FIERRAVANTI-WELLS—Is this the policy component? The admiral stated earlier that the operational component goes to the Maritime Incident Management Group but the policy—

Mr Carmody—Referring to the operational response to vessels arriving, that is the Maritime Incident Management Group. I do not think there is too much more than that. As described in the press release, the Border Protection Committee of cabinet, which is supported by the Border Protection Task Force, drives the government's response to the people-smuggling threat.

Senator FIERRAVANTI-WELLS—That has recently been established?

Mr Carmody—That has recently been established, that is right.

Senator FIERRAVANTI-WELLS—Mr Carmody, as the deputy chair of that body, and without going into operational matters, what has happened to necessitate in effect three entities?

Mr Carmody—They have quite distinct roles. As I said, the Maritime Incident Management Group is in response to incidents occurring in relation to the interception of a vessel. This is at the other end of the spectrum. It is driving the government's response to the threat of people smuggling.

Senator FIERRAVANTI-WELLS—When did the Maritime Incident Management Group start its work? Sorry, Admiral, I knew you would end up having to come back.

Rear Adm. Du Toit—Senator, the inaugural meeting of the Maritime Incident Management Group occurred on 27 March.

Senator FIERRAVANTI-WELLS—This year?

Rear Adm. Du Toit—This year, that is correct.

Senator FIERRAVANTI-WELLS—Admiral, we were talking earlier about protocols and to information relating, for example, to specific numbers on the vessels and to gender and age breakdowns—basic details about people on the vessels. Is Border Protection the first point that asks these questions? Does that come under your umbrella, if I can put it that way?

Rear Adm. Du Toit—That is correct. A vessel would be apprehended using all the tactile level protocols, and they would send back formal messaging which would tell us as the situation unfolds. Quite frankly, as things are still being conducted those figures can change, so we always caution, when we advise those figures to people, that they provide us with the composition of the passengers and crew and where they appear to be from. Sometimes we can only ascertain the actual countries of origin when they are processed by DIAC down the track. We will give best indications of the make-up of those people, their ages, whether there are any children or minors, and where they might be from.

Senator FIERRAVANTI-WELLS—I ask a general question relating to the SIEV 36 vessel. Have you coordinated the costs of this operation? Who will pick up the tab for these costs?

Rear Adm. Du Toit—No, it is not something that I coordinate. At the end of the day I am an operational entity. I am given my assets by both Defence and the Customs and Border Protection Service in the offshore space. Any costs involved once people reach shore and have to be moved to hospitals and the like unfortunately is outside my remit.

Senator FIERRAVANTI-WELLS—Thank you.

Rear Adm. Du Toit—Madam Chair, might I make a correction for the *Hansard* record? Earlier I said that SIEV 36 had been detected by HMAS *Albany* at 9.58, which is correct. However, I said that they reported it at 10.19. In fact, that should read, ‘They boarded the vessel at 10.19.’

CHAIR—I think that is all we have.

Senator BARNETT—No, I have three other areas that I do not think will take too long. Mr Carmody, yesterday we had discussions with the Classification Board. I am not sure whether you are aware of those discussions, but obviously it involved Customs to some degree and a good deal of concern was expressed about the pornography, filth and other offensive material being made available in petrol stations, general stores, 7/11s and the like all around Australia, notwithstanding the fact that some of the publications had been refused classification. Have you received advice from the Classification Board relating to publications subject to those call-in notices that have been found to contain material that should be refused classification?

Senator Ludwig—Madam Chair, to put that into context, this came under the broad heading of a serial classification that has been provided by the Classification Board in respect of publications that are then wrapped and given that category—I think category 1, Senator Barnett. The matter was brought to the attention of the Classification Board by Free to Be Kids. Under the serial classification what was contained in the wrappers was not a priority 1 classification but in fact RC documents. They referred those matters to the various state police.

Senator BARNETT—Yes, the various state and territory police ministers and the Australian Federal Police.

Mr Carmody—Yes.

Senator BARNETT—A February letter from Minister Bob Debus to each of those state and territory police ministers expressed his concern and asked them to use all available resources within their power to act upon it. You are a key enforcement agency at a customs level so I am interested to know what you are doing about it.

Mr Carmody—What our role is?

Ms Pitman—Generally speaking, our role is to reflect the domestic restrictions or classifications. We receive advice from the Classification Board about the relevant classifications and we apply that at the border. Referring to your specific question, I would need to confirm that we have received that advice, as I do not have it here.

Senator BARNETT—You can take that question on notice. Can you give us feedback relating to what sort of success you are having in stopping this type of material getting into Australia?

Ms Pitman—I have some detection figures that I could give you. Whether or not it is exactly the same material I could not say.

Senator BARNETT—That is okay; fire away.

Ms Pitman—For example, in 2007-08 there were approximately 630 detections of objectionable material involving 10,441 individual items, and 14 prosecutions followed from that.

Senator BARNETT—How many?

Ms Pitman—Fourteen, including six for possession of child exploitation material.

Senator BARNETT—How many of those were successful?

Ms Pitman—I apologise, as I do not have the success rate in front of me.

Senator BARNETT—You can take that question on notice.

Ms Pitman—Yes.

Senator BARNETT—Can you also take on notice and give us a breakdown of the type of material that you have apprehended? Can you give us some more detail about the nature of the 14 prosecutions?

Ms Pitman—I think we will take that question on notice and provide you with what information we can.

Senator BARNETT—That is 2007-08. What about the figures for 2008-09? Do you have the latest figures for us?

Ms Pitman—I am afraid I do not have the figures for the number of detections in 2008-09, but I do have a figure of 27 prosecutions conducted, including 20 for possession of child exploitation material.

Senator BARNETT—That figure has jumped a bit, has it not?

Ms Pitman—Yes.

Senator BARNETT—Is that in the period from 1 July through to April? What period is that for?

Ms Pitman—This document is dated 25 May 2009.

Senator BARNETT—Can you confirm that on notice and fill in the rest of the details? Frankly, that jump in figures should give rise to some concern—in particular for the child exploitation material.

Ms Pitman—I do not have a broader assessment in front of me. Obviously Customs takes it seriously and prosecutions are pursued where we can.

Senator BARNETT—Could you also take that question on notice? Have you received advice from the Classification Board regarding distributors who have been unwilling to respond to the call for the publications to be referred to the board for classification? I said that the board chairman was probably pulling out his hair because he was annoyed that distributors were not responding to his request to send in these publications for assessment and classification.

Ms Pitman—I am afraid I cannot confirm that at the moment. However, I can take that question on notice and we can provide that information to you.

Senator BARNETT—I draw it to your attention and seek your response. This is an important matter. If these distributors are known to the Classification Board, they should also be known to Customs. I assume that these are the same people or entities that are perhaps bringing them in. Obviously they should be apprehended and their efforts should be thwarted.

Ms Pitman—They might well be known to us, but I just cannot confirm that. I will need to take that question on notice.

Senator BARNETT—Would Mr Carmody concur with that assessment?

Mr Carmody—I would have thought that it was important information for us, yes.

Senator BARNETT—I would be disappointed and disturbed if you had not been advised by the Classification Board. That is a question we did not ask them yesterday, but I hope that they advised all relevant enforcement agencies of the identity of the distributors of these publications. In your view, are there any obstacles to the effective enforcement of regulations and current law relating to this material getting in?

Ms Pitman—I am not aware of any.

Senator BARNETT—Mr Carmody?

Mr Carmody—I echo that statement.

Senator BARNETT—Are you taking any other steps apart from your usual practice to ensure that the material does not get in?

Ms Pitman—Our usual practice relies heavily on intelligence and information sharing with the Classification Board. You would be aware that we also conduct a broad range of interventions at the border relating to cargo. Some of those might also lend themselves to the detection of this material.

Senator BARNETT—Can you describe for us what successful measures you have put in place? I assume that you also get intelligence from the police as well as the Classifications Board.

Ms Kelley—Yes, we do. We have a number of what we call computer forensics tools that we use at both airports and other locations to interrogate computers and other electronic devices.

Senator BARNETT—When you say ‘both airports’ what do you mean?

Ms Kelley—In airports.

Senator BARNETT—You said in airports?

Ms Kelley—In airports. When we get other detection we are able now to interrogate some of those electronic devices. That is one of the reasons for our increase in prosecutions this year.

Senator BARNETT—You have obviously identified the amount of material that has been detected. Do you have a view on how much has not been detected?

Mr Carmody—We do not have any.

Senator BARNETT—You could not say that you believe you are apprehending 10 per cent or 50 per cent of the material that is entering Australia?

Mr Carmody—I do not believe that we are in a position to do that.

Senator BARNETT—If you were could you take that question on notice? If you thought that you could—

Mr Carmody—I could take that question on notice, but I do not think the answer will be any different to what we have stated.

Senator BARNETT—Okay. Are you aware of any amendments that are currently being drafted with regard to customs regulations to increase penalties for the import of commercial quantities of objectionable material?

Ms Pitman—No.

Mr Carmody—No.

Senator BARNETT—Are you aware of any amendments to customs regulations regarding the import of objectionable material?

Mr Carmody—I am not aware, but we could take that question on notice to see whether we can inform you of any developments.

Senator BARNETT—Thank you for that. We have touched earlier on the *Oceanic Viking*, so let us go to that now. In the February estimates and at last year’s estimates we asked about the monitoring of whaling in the Southern Ocean. I received answers to questions on notice Nos 55 and 56, for which I thank you—although, with respect to the answer to question No. 55, I would consider it a non-answer. Nevertheless, could you advise us of the status of the information and material that you obtained in the monitoring of whaling in the Southern Ocean last year?

Mr Carmody—From our perspective I do not think that anything has changed since you last asked us these questions, Senator.

Senator BARNETT—Since last February?

Mr Carmody—Yes.

Senator BARNETT—I wanted to find out the date on which you transferred the information to the department. That has not come through in the answers to questions on notice. You must have a date.

Mr Carmody—Yes, but I do not have it on me. We can take that question on notice.

Senator BARNETT—I have already asked that question on notice and you have not given me the date.

Mr Carmody—The question was to provide a copy of the letter of transmittal. That was the question that was taken on notice. The answer was that there was not a letter of transmittal, so we were not asked—

Senator BARNETT—What would there have been, Mr Carmody?

Mr Carmody—I am not aware—

Senator BARNETT—How do you communicate?

Ms Grant—I can answer that question. The material we gathered with the monitoring exercise was evidence. We used transfer of evidence forms when we passed that material to the environment department. But that evidence has since been passed to the Attorney-General's Department for its consideration of the case.

Senator BARNETT—When was that done?

Ms Grant—I do not have the date that Environment would have—

Senator BARNETT—But you know that. How do you know that?

Ms Grant—I know that the evidentiary material is with the Attorney General's Department because the relevant officer has advised me that they have the material.

Senator BARNETT—When did he advise you?

Ms Grant—He actually advised us at the Senate hearings in February. I recall that when I gave the answer that we had passed the material on to the Department of the Environment, Water, Heritage and the Arts at that hearing, it was updated to say that the evidence had subsequently been sent over to the Attorney-General's Department.

Senator BARNETT—We thankfully have the Attorney-General's Department with us, and we will get that tabled shortly. But in terms of the advice and when you provided it to the Department of the Environment—

Ms Grant—We will be able to provide the actual date on notice.

Senator BARNETT—With the greatest respect, you know exactly what was behind that question and what was intended, and you have given a non-answer as far as I am concerned and I am not happy.

Mr Carmody—I apologise if you believe that we were seeking to be obtuse or give a non-answer. That was not our intent. As quickly as possible we will get the date you have asked for.

Senator BARNETT—Thank you. You do not know the detail, but can you explain in further detail what was passed to the department in terms of materials, information, videos or whatever?

Ms Grant—We passed on the video and photographic material that was taken during whale monitoring patrol. I would need to defer to my colleague from the Attorney General's Department as to precisely what was provided to them.

Senator BARNETT—So you do not know what was in your possession when you passed it to the Department for the Environment.

Ms Grant—No, Senator.

Senator BARNETT—That is very surprising.

Ms Grant—We know that we had a list of the videos we took—

Senator BARNETT—You just said 'video', Ms Grant, and now you have said 'videos'.

CHAIR—Order!

Senator BARNETT—I am after some—

CHAIR—I am the chair and I have called for order.

Senator BARNETT—I would like to ask some questions.

CHAIR—Senator Barnett!

Ms Grant—I apologise that—

CHAIR—I want to remind you that I think it is only fair to let this witness try to answer the question to the best of her ability, and she is trying to do that. Just give her a chance to get the answer out for you. I am sure you can then respond with a further question.

Ms Grant—I apologise if it appeared misleading, Senator. I think I used the term 'video material', which could be singular or plural. In answer to your subsequent question, I made it quite clear that the videos were in the plural.

Senator BARNETT—I am happy for you to check the *Hansard*. You said 'video and photographic material'. Nevertheless, I am happy for you to check the *Hansard*. Please tell us what material, videos or otherwise, you passed to the environment department.

Mr Carmody—I do think that 'video and photographic material' is capable of referring to more than one photograph and more than one video. There was no intent to mislead or whatever.

Senator BARNETT—Let us move on. Thank you, Mr Carmody.

Ms Grant—There were a number of photographs and a number of videos over a few dates. I do not have the exact dates that the photographs and the videos were recorded. But that is the nature of the material that was transmitted to the environment department and which is now with the Attorney General's Department.

Senator BARNETT—Would you please take on notice the specifics of the material that was passed to the environment department?

Ms Grant—Certainly.

Senator BARNETT—Together with the date and the nature in which it was passed over. It was obviously not a letter of transmittal. Perhaps the department might assist. Mr Campbell, it is good to see you again.

Mr Campbell—We received the material in the Attorney General's Department on 19 August 2008. I think that was set out in response to question No. 57.

Senator BARNETT—Thank you. What have you done with it? The last time we discussed this in February it was not much. Have you done anything further with it?

Mr Campbell—The answer to that question is that we have that material. If you are asking whether we have done anything with the material, no, we have not done anything with the material.

Senator BARNETT—Do you intend to pursue the matter any further?

Mr Campbell—That goes into the broader question of a legal case against Japan. The position on that matter is that the government is still pursuing its diplomatic initiatives. But it has not put aside taking a legal case. The evidence would be likely to be used in that legal case. That is why it is in the possession of the Attorney General's Department. If the government does decide to take a legal case, it is likely that it would be Attorney-General's Department and the Office of International Law who would have primary responsibility, as lawyers, for running that case.

Senator BARNETT—Have you made an assessment of the veracity of the material you have in terms of a probable or possible legal case?

Mr Campbell—I am not sure what you mean by the veracity of the material.

Senator BARNETT—I think you know what I mean, Mr Campbell. You are a lawyer.

Mr Campbell—The material shows evidence of Japanese whaling, which would be of use in a legal case. As stated by my colleague, a record has been kept of the chain of evidence to ensure that there has not been a break in that chain of evidence.

Senator BARNETT—Can you further respond to the question, which I am happy to ask again: have you made an assessment of the veracity of that evidence in terms of pursuing a legal case?

Mr Campbell—The material is likely to be used in a legal case because it contains evidence—

Senator BARNETT—Is it likely to be persuasive?

Mr Campbell—We would need evidence that the Japanese conduct whaling in the Southern Ocean. That is the evidence of the Japanese conducting whaling in the Southern Ocean. In addition to that, of course, we would have to show a number of other elements, like any other legal case—jurisdiction, the merits of the case and that sort of thing.

Senator BARNETT—So, it is a wait and see while government is pursuing what Peter Garrett would refer to as diplomatic options or solutions. Is that the way it would be seen?

Mr Campbell—I would not describe it as a wait and see situation, because everything that is done before the taking of a legal case would be relevant to that case. It is not as if nothing would be going on.

Senator BARNETT—We have seen lots of media releases from Mr Garrett talking about his efforts with respect to combating whaling in the Southern Ocean. But they are mostly what you would call PR pieces. They do not demonstrate in terms of finding solutions or outcomes, but—

Mr Campbell—It is not something I am responsible for, but there are efforts within the meetings of the International Whaling Commission to look at these issues in an attempt to resolve them. That is not something that the Attorney General's Department is responsible for. So, personally, I would not describe it as PR.

Senator BARNETT—Would there be any other measures that the Attorney General's Department is undertaking to combat whaling in the Southern Ocean? Are you aware of any other measures that your department is involved in?

Mr Campbell—The role of our department is to provide legal advice in relation to whaling, and principally advice on the international legal aspects of whaling and any other initiatives that the government might seek to take. Yes, we provide advice in relation to international legal action. If there are international legal issues that arise out of the meetings of the International Whaling Commission, we would also provide advice on that.

Senator BARNETT—Have you provided advice on that since February? Have you provided advice on any of the aspects you have just referred to, including the International Whaling Commission?

Mr Campbell—I think we provided advice—and the events were going on around then—in February in relation to the activities that were then going on in the Southern Ocean, but not specifically since February. I can take the question on notice. But my recollection is that it is not specifically since February in relation to written advice about meetings of the International Whaling Commission.

Senator BARNETT—Have you prepared or provided advice to government with respect to the prospects of success or otherwise of legal action vis-a-vis Japanese whaling in the Southern Ocean?

Mr Campbell—Yes, we have in the past. But I think we have referred on previous occasions to advice on the issue that the government has received from Professor James Crawford from the University of Cambridge.

Senator BARNETT—When was that advice sought?

Mr Campbell—My recollection is that he provided advice, but I cannot remember the date. If you will pardon me for a second I will see if I can get the precise dates.

Senator Ludwig—My recollection is that it was when I was last here.

Senator BARNETT—It was about February.

Mr Campbell—I think it was 6 February, and then that was followed up with further advice in April last year.

Senator BARNETT—Has advice been provided by the department, separate from the professor's advice? If so, when?

Mr Campbell—That was—

Senator BARNETT—I am happy for you to take that on notice.

Mr Campbell—I think I would have to take that on notice. There was some further advice given in about November last year.

Senator BARNETT—If you are happy to take that on notice, that would be good.

Mr Campbell—It was given in November. The original advice I referred to from Professor Crawford was dated 5 January 2008 and the subsequent advice was given on 12 March 2008.

Senator BARNETT—Thank you very much.

Mr Campbell—My recollection is that the advice I referred to from the department—and from myself and the Solicitor-General—was given in November last year, but I will have to get the precise date.

Senator BARNETT—Was that the only advice that you provided? Was there any advice previous to that or subsequent to that?

Mr Campbell—Not legal advice. If I can put it this way, that advice was conveyed to the government. The advice we gave was of course conveyed to the government and it may have been summarised in that context.

Senator BARNETT—Summarised in?

Mr Campbell—In the context of providing the government with the advice, it would have been summarised.

Senator BARNETT—That was in November 2008.

Mr Campbell—Yes.

Senator BARNETT—My question was: was there any additional advice prior to or subsequent to that?

Mr Campbell—Advice was given by the department in the period between December 2007 and when Professor Crawford gave advice in January 2008.

Senator BARNETT—And not otherwise?

Mr Campbell—If there are meetings about whaling or something, then obviously if legal issues come up we may give advice in the course of those meetings.

Senator BARNETT—I am specifically thinking of 2008 and 2009.

Mr Campbell—If you are talking about written advice—

Senator BARNETT—Yes, written advice. I am happy for you to take it on notice.

Mr Campbell—I will take it on notice. The primary written advice is those pieces of advice that I have mentioned—that is, the two pieces of advice from Professor Crawford and the advice from the Solicitor-General and me in, I think, November 2008.

Senator BARNETT—Thank you for that. Now back to Mr Carmody regarding consultancies. There are four consultancy reports, and I would like a response about if you can provide it. I am happy for you to take the question on notice. First, there is the PricewaterhouseCooper's review of performance and evaluation processes, completed 30 June 2008 costing \$634,350.

Mr Carmody—I will take that on notice.

Senator BARNETT—That is fine. If you could provide further and better particulars and if it is either the report or the executive summary, it would be appreciated.

Mr Carmody—If you could give us the full list, I suspect my answer will be same for the other three.

Senator BARNETT—Yes. Deb Johnson provided consultancy services for the executive team in a report dated 30 June 2008 which cost \$10,000.

Mr Carmody—What was the name?

Senator BARNETT—Deb Johnson.

Mr Carmody—I will take that on notice.

Senator BARNETT—The third consultancy involved Saville and Holdsworth Australia Pty Ltd and was on directors' career training development. It was completed on 11 September 2008 at a cost of \$173,258.

Mr Carmody—I will take that on notice.

Senator BARNETT—Porter Novelli Australia Pty Ltd is undertaking a public relations consultancy that is due for completion on 30 June 2009 at a cost of \$75,000.

Mr Carmody—I will take that on notice.

Senator BARNETT—You may not have that one. I presume that will be concluded in June. I would like the terms of reference and any details about that.

Mr Carmody—We will provide those.

Senator BARNETT—Thank you very much. That is all I have.

CHAIR—Thank you very much, Mr Carmody.

Senator BARNETT—I would like to put two other questions on notice. You would be familiar with the Australian Customs and Border Protection Service hotline campaign costing \$174,939.82. Again, can you take that on notice?

Mr Carmody—Certainly. I am sure you understand that is about promoting community engagement.

Senator BARNETT—Indeed. Can you give us further particulars? There is also the Smartgate public information campaign costing \$1.3 million-odd and the tourist refund scheme costing \$31,291.

Mr Carmody—We will take those on notice and provide details.

Senator BARNETT—Thank you

CHAIR—Just before you go, Mr Carmody, you promised to get us a timetable or some other information. Will you take that on notice?

Mr Carmody—No.

CHAIR—It was the chronology.

Senator Ludwig—I understand that that was not persisted with.

Senator BARNETT—Was that the chronology of the people-smuggling processes? Do you have that with you?

Mr Carmody—I think there were issues, as was stated on a number of occasions. This is a matter under investigation, so I certainly would not be comfortable tabling that here now.

Senator BARNETT—I think that was in answer to Senator Brandis. There was a report, and I think Senator Brandis asked you to delete what you did not wish to be in it. In any event—

Mr Carmody—We will take it on notice.

Senator BARNETT—If that is the best you can do at the moment, just take it on notice.

Mr Carmody—We cannot do anything at the moment. We will take the request on notice.

CHAIR—Thank you. I now call representatives from the Australian Commission for Law Enforcement Integrity.

Senator Ludwig—Chair, we do not have all the committee with us at the moment, but I was having a look at the remaining workload for the committee and, without wanting to seem forward, it does seem a large workload for the remaining hours. Will the departmental officers from all the outcomes need to be available from eight o'clock onwards? I take it that is a yes.

Senator BARNETT—We are working through the agencies.

Senator Ludwig—The only reason I raised that is that if there are agencies for which questions could be put on notice—

CHAIR—I think it highly unlikely that we will get to outcomes 2 or 3 tonight. If there are officers responsible for those outcomes hanging around, I suspect that they need not. We have the rest of the agencies and then we will go to outcome 1, bearing in mind that we have the A-G's Department until 12.30 pm tomorrow. The A-G's Department is going for 2½ days this time, not two. I suspect that if we finish the agencies after dinner we will not get beyond outcome 1 tonight.

[6.10 pm]

Australian Commission for Law Enforcement Integrity

Senator BARNETT—I have questions in one area of interest for Mr Moss and Mr Bache. Thank you for being here. I understand that you engage consultancy services from time to time, as and when required, to provide professional and specialist services where you do not

have the skills available or where there is a need for independent specialist and professional input. Have you engaged consultancy services over the past 12 months?

Mr Moss—In answer to a question on notice we provided a full statement regarding the use of consultants and consultancy services. That was provided following the hearing on 23 February this year. Since then we have engaged one additional consultant. The purpose of that consultancy, which is still underway, is to provide me with quality assurance on a report that deals with complex matters and also, since ACLEI is a relatively new agency, to take the opportunity to gain any learning we could from that particular consultancy.

Senator BARNETT—Who is that consultant?

Mr Moss—The consultant is Mr Tony Blunn.

Senator BARNETT—Yes, very good. Are there terms of reference?

Mr Moss—Yes. As I mentioned, they relate to an investigation. I have asked Mr Blunn if he would assess the material in the report, which is required after I conduct an investigation under the LEIC Act, and ensure that it is of high quality.

Senator BARNETT—Thank you for that. Earlier today we heard from the AFP about the confidant network and the referrals. I think there were 103 in the period to which the question referred. Part of the response was that they were forwarded, where appropriate, to ACLEI and/or the Ombudsman, but most of them were dealt with internally. Can you provide advice about any referrals you may have received and what consequences flowed?

Mr Moss—The requirement under the LEIC Act is for the head of a law enforcement agency to notify me of a corruption issue in their agency when they become aware of it. We are talking about the AFP, which has a confidant network. This is a very fine concept and it works well. The matters that are picked up by the confidant network could cover a range of issues. The AFP Act has four categories of issue, from inappropriate conduct, through minor misconduct and serious misconduct, to a corruption issue. I would expect to be notified, under my legislation, only of those matters relating to a corruption issue. The confidant network in another sense goes to other parts—for instance, serious misconduct would go to the Commonwealth Ombudsman. In that sense, I do not have full visibility of matters coming through the confidant network.

Senator BARNETT—Can you provide advice as to the status of some of the referrals you are currently dealing with? You can only advise us to the extent that you can; I understand the confidentiality around these matters.

Mr Moss—When an allegation or information raising a corruption issue is notified to me, I would become aware that it was raised initially through the confidant network. I do not have any figures for you as to exact numbers that have come to me that way but I could provide those figures to you if you wished.

Senator BARNETT—That would be useful. We were looking at the period from 1 July last year to now. I think the number was 103, from memory, but that will be in the *Hansard* transcript of the AFP evidence.

Mr Moss—Certainly.

Senator BARNETT—How many matters are currently before ACLEI?

Mr Moss—I have 72 corruption issues underway. Some of those are being investigated on my behalf by the agencies themselves, as provided for under the legislation; some I am conducting as investigations on my own behalf; and some I am conducting as joint investigations with other agencies. Those in that category would amount to 12.

Senator BARNETT—All right. In broad terms, from where have they come? Can you give us an overview?

Mr Moss—Yes. These matters come to me in three ways. They may have been notified to me by the heads of agencies or they may have been referred to me by another person or another agency. They could be in the category identified and normally covered by referral. But some matters are from agency staff who have come directly to me with concerns that they have and information that raises a corruption issue.

Senator BARNETT—In terms of trends, can you share some observations about the 72 cases underway? Are you getting more or less—are they going up or down? What observations can you share with the committee regarding trends?

Mr Moss—The trend in workload for ACLEI is steadily increasing. For instance, in the first three-quarters of this financial year there was an increase in each quarter. It is yet to be seen what the results are for the final quarter of this financial year. So there is that increase. There is also an increase in the complexity of corruption issues that we are assessing and referring back to agencies or investigating ourselves. There is also an increase in the number of hearings that I am holding in the course of investigations.

Senator BARNETT—How are you getting on with your workload and the resources available to meet the workload before you?

Mr Moss—As we have discussed in this committee on previous occasions, it was not known what funding would be needed or the critical mass of staff that would be needed. What has been adopted is a building block approach to funding ACLEI. In each of the financial years, including the one upcoming—2009-10—there has been an increase in ACLEI's funding and consequently also in staff levels. So, in 2007-08, ACLEI had nine full-time equivalent staff, and in 2008-09 that rose to 12. It will rise to 17 as of 1 July this year. At this stage that is a very encouraging trend.

I note that the PJC on ACLEI has recently completed an inquiry. I acknowledge that Senator Stephen Parry is a member of that committee and is here tonight. It has recently completed an inquiry into law enforcement integrity models. One of the recommendations of that inquiry is that there be a review of ACLEI's level of funding. I note also that there is a three-year review required of the LEIC Act. The same PJC on ACLEI has recently announced its terms of reference for an inquiry into the LEIC Act after its first three years. I understand that inquiry should commence its hearings early in July.

Senator BARNETT—How long will that take? What is the expected duration of that inquiry?

Mr Moss—I am not sure, but I think the intention is that the inquiry will be completed this calendar year.

Senator BARNETT—Are you aware of the proposed changes to the legislation under which you operate?

Mr Moss—What changes do you have in mind?

Senator BARNETT—I am asking if you are aware of any proposed changes to the legislation.

Mr Moss—At this stage the PJC has announced its terms of reference. It will call for submissions in response to those terms of reference and then take evidence. Those issues may come up at that stage.

Senator BARNETT—So you would not expect any changes to come forward during the course of that inquiry?

Mr Moss—No, I would not, unless they were of a minor nature that could be dealt with in omnibus legislation.

Senator BARNETT—Thank you. That is much appreciated.

CHAIR—If we have no other questions, I am going to let you and your officers go.

Mr Moss—Thank you very much.

Senator Ludwig—I know Senator Brandis is back. I would like an indication as to where we might get by 11 pm. I have officers dealing with outcomes 1, 2 and 3 from the Attorney General's Department on standby. If you do not think that we will get to their areas then we may be able to let them go now and return tomorrow.

CHAIR—I have already told you that outcomes 2 and 3—

Senator BRANDIS—Speaking for myself, I do not think that the Australian Crime Commission will take 1 ½ hours. I cannot imagine why the High Court of Australia has been put down for 1½ hours. I do not have any questions for most of the agencies tonight, but there may be other members who do. There is no possibility whatsoever that outcome 3 will be reached tonight. I am also inclined to think that it is unlikely that outcome 2 will be reached tonight, but certainly those dealing with outcome 3 could be sent away.

Senator Ludwig—I will leave that to the chair to decide, but I would appreciate some indication. I am happy—although the people behind me may not be as happy as I am—to keep those responsible officers for outcomes 1 and 2.

Senator BRANDIS—I would chance my arm and say send those dealing with outcome 2 away also.

CHAIR—I think I indicated that previously. As chair, I am saying that officers dealing with outcomes 2 and 3 can have an early mark and we will see them back here at 9 am tomorrow.

Senator Ludwig—Thank you.

[6.25 pm]

Australian Security Intelligence Organisation

CHAIR—Thank you for your attendance this evening. Do you wish to make an opening statement?

Mr Irvine—Thank you, Madam Chair, and members of the committee for reorganising things to enable me to attend at this time. I will be very brief. I am six weeks into this job and I have a number of points to make. First, in terms of the work ASIO does, terrorism continues to be a very significant element. It is, we believe, an immediate threat to Australia, to Australian citizens and to Australian interests. We expect it to be an enduring—for the foreseeable future anyway—and destabilising global force for some years to come.

For us, terrorism is a threat to Australians both at home and overseas. There have been enough incidents overseas recently to emphasise that point. In addition to the very substantial work on terrorism that ASIO is doing, we are also active in terms of other elements of our responsibilities under the ASIO Act, including areas of espionage and foreign intelligence activities generally—espionage and foreign interference, if you like. We are also increasingly finding ourselves having to deal with the threats that are posed by any Australian involvement in the spread of weapons of mass destruction. That remains of concern.

Probably of more recent security concern—and one that is growing—is the whole question of electronic interference. Insofar as that affects national security it is also an ASIO responsibility. It has also involved us in a growing interface with the owners and managers of Australia's critical infrastructure, including those in the private sector.

The final point to make is that ASIO is now, I think, in the third full year of a period of expansion. From all that I can see, having been there in the last six or seven weeks, ASIO is managing that expansion extremely well and is indeed being positioned in precisely the place that we felt it should be to meet the challenges of the coming years. That is really all I need to say by way of introduction. Of course, I am happy to respond to any queries and questions people may have.

CHAIR—Thank you.

Senator LUDLAM—Thank you, Mr Irvine, for coming in. This is by way of an icebreaker, because we have only a couple of minutes before dinner. I certainly appreciate that we have managed to make time for you on this occasion. This is my third estimates committee experience, and both previous times we have held you back so late that I think you have been sent home without actually getting in front of the committee. I am very pleased to be able to finally meet with you.

I will start with a general overview. I missed estimates this time last year. There have been very large increases in funding since 2000—in fact, quite a steep incline in the last two budget years, with some large one-off equity injections in 2007-08 and 2008-09. Can you describe for us in broad terms what the budget increases mean for your agency and what that capital funding was for?

Mr Irvine—Off the top of my head, the figures suggest that over a period of four years ASIO staffing moved from, I think, about 800 to its current position of about 1,600. By the

end of next year or thereabouts, we will move to approximately 1,800. The reason for this very substantial increase is that, because of the advent of terrorism and the need to devote very considerable resources to protecting the Australian community against that particular threat, ASIO has had to increase its expertise. It is not so much its expertise but its capabilities across the spectrum—that is, it has had to develop the capability to provide reliable and useful threat assessments to the Australian government, which requires a highly developed analytical capability that four or five years ago we did not have to the extent required. It has required us to have considerably more intelligence officers who get out and do the business of security intelligence collection to identify and if necessary, and often in consultation and collaboration with other government agencies, to disrupt potential terrorist threats to Australia.

It was also found that over a period of time, due to focus initially on things such as the Olympics and then terrorism, our counterespionage capabilities had been run down and they needed to be built up again. In addition, we have had to increase the effort and the capability that we now have in respect of technology. As you know, that is a rapidly growing area and we have had to expand that to a level that is appropriate for Australia and the Australian security intelligence scene at present. That is roughly where expansion has occurred.

Proceedings suspended from 6.31 pm to 8.00 pm

CHAIR—We will reconvene our Senate estimates hearing into the Attorney-General's portfolio. We will continue with our questioning of the Australian Security Intelligence Organisation. Mr Irvine, I welcome you back to the table.

Senator LUDLAM—We had about four minutes before we broke for dinner. You had given us a basic overview of what it meant for the agency to have some quite substantial increases in funding. The second part of that question related to one-off blocks of equity funding over the last two financial years for, I understand, capital equipment. Can you just describe for us in broad terms what that was for.

Mr Irvine—The organisation has in the last two years been building up its technical capabilities very considerably in terms of IT equipment and so on. My understanding is also that another element of our capital equipment devolves on our new building and the work that will be going into that.

Senator LUDLAM—In the last two financial years—appreciating that some of this will have occurred a little while before you took up your position—there was about \$150 million in 2007-08 and maybe \$75 million in the last financial year.

Mr Irvine—I just ask where you are extracting those figures from.

Senator LUDLAM—I believe it actually came out of the budget papers. I can probably be more specific if you require.

Mr Irvine—Thanks.

Senator Ludwig—Sometimes it helps, Senator—

Senator LUDLAM—If you have the direct source?

Senator Ludwig—if you have the page so that the witness can view the figures with you.

Senator LUDLAM—No, I do not in this case.

Mr Irvine—What figure do you have for equity injections? You said \$150 million.

Senator LUDLAM—I am reading it off a graph.

Mr Irvine—That would have been over the two previous years. I would actually prefer to give you a fuller answer on that particular question, which I basically cannot do off the top of my head. If you would allow me to come back on that one, I would be very happy to do so.

Senator LUDLAM—If you are able. While you are doing that, I will seek the direct reference for you, if you like, in the budget papers. That might be of assistance.

Mr Irvine—Thanks. I think I probably have it, but thank you.

Senator LUDLAM—Your agency operates under some fairly specific security requirements that do not apply to other agencies that we would normally speak to in estimates hearings.

Mr Irvine—Yes.

Senator LUDLAM—How do the Australian public know if they are getting value for money? What are your distinct outputs? How are we measuring the success of the agency, particularly benchmarked against big increases in funding?

Mr Irvine—I frankly think that is a difficult question to answer to the full satisfaction of the Australian public in the sense that, necessarily, ASIO's activities and its successes cannot be made public. So what the system has in place is, first of all, a form of reporting which is public. The annual report of ASIO is put forward in an unclassified form for the public. That necessarily tends to speak in generalities. For the government itself, there is a much more complete report of a highly classified nature. The second area of oversight, if you like, is through the Joint Parliamentary Committee on Intelligence and Security, which looks into the management and administration of ASIO. There are other measures of oversight that ensure or add substance to the notion of assurance to the Australian public that ASIO is indeed working effectively and with appropriate levels of probity.

Senator LUDLAM—I am a little more familiar with the role of the joint parliamentary committee, but can you describe for us in broad terms the classified reporting obligations that you have, presumably to the Attorney-General? What sort of form do they take?

Mr Irvine—In essence it takes the form of a typical Public Service annual report but sometimes it goes into quite considerable detail about cases and statistics that perhaps cannot be made public and so on.

Senator LUDLAM—That is annual? There is no form of quarterly reporting? That is one annual report document that is submitted to the AG?

Mr Irvine—Yes. There is, of course, a constant interplay between the organisation and the Attorney-General as to the activities of the organisation, sometimes on a day-to-day basis.

Senator LUDLAM—In broad terms, when we first began you obviously placed quite a strong emphasis on the counterterrorism work that you do. Can you explain that for us as a proportion of the agency's workload in rough numbers? Are you half preoccupied with counterterrorism?

Mr Irvine—I would be picking figures out of the air, but my sense is—I have not got before me a strict breakdown of operational effort—that it would be considerably more than 50 per cent.

Senator LUDLAM—So more than all the rest of the work of the agency combined?

Mr Irvine—I have to be a little more specific there. What do you mean by counterterrorism—or what do I mean by counterterrorism? Part of our threat warning responsibilities relate very directly and mostly but not completely to counterterrorism. A considerable number of our operational activities relate to counterterrorism—say, countering potential terrorism here in Australia. At the same time, we also conduct liaison activities with counterpart organisations overseas. There, again, a very large percentage of their actual work is probably devoted to the broad definition of counterterrorism, but there are other things as well. So I would say well over 50 per cent. I would be thinking, off the top of my head, probably well over 70 per cent.

Senator LUDLAM—Thanks. I guess I was just looking for that kind of broad-brush approach. You also described how over four years—I believe you mean to the end of 2010—you will have gone from 800 staff to approximately 1,800 staff, an increase of around 1,000 personnel.

Mr Irvine—Yes.

Senator LUDLAM—Is that work being almost entirely devoted to counterterrorism related operations?

Mr Irvine—Not entirely. Again, you just have that slight problem of specificity and definition. A very large part of it is going to counterterrorism, but it is also going to boost the IT and analytical capabilities of the organisations, most of which, roughly in accordance with how the organisation works, will be counterterrorism. Again, it would probably be about 70 per cent.

Senator LUDLAM—Thanks. Right at the beginning, again, you referred to owners and managers of critical infrastructure, public and private, within Australia. This is leaving the foreign domain and looking at your role within Australia. Can you just describe for us, maybe in a bit more detail, what you meant there.

Mr Irvine—I referred to that in terms of the potential for elements of critical infrastructure to come under threat. You can imagine for yourself the types of infrastructure we are talking about. It can include, obviously, the communications infrastructure, both electronic and physical. It can include the national infrastructure related to major resources and so on.

Senator LUDLAM—That is helpful. Communications networks, power infrastructure, water and critical infrastructure?

Mr Irvine—And also critical industries.

Senator LUDLAM—Such as?

Mr Irvine—At this stage, the new resource industries are pretty critical in terms of Australian national interests.

Senator LUDLAM—Again, you are still referring chiefly to the context of attack by external operatives or people of ill will? It is still the terror related side of things?

Mr Irvine—It is largely the terror related attack. We also work on the question of politically motivated violence within Australia, which frankly is at a small and manageable level. But in this case we certainly see that the biggest single threat to critical infrastructure from the violence point of view is potentially coming from terrorist-type attacks, yes.

Senator LUDLAM—This might seem as if it is something at a tangent, but it is related. I have had direct contact with constituents who have reported to me that they are people engaged in peaceful demonstrations outside power stations and so on. In one example, a man was holding up a banner outside the Kwinana coal-fired power station in my state of Western Australia. He was subsequently visited by ASIO agents for a quiet chat. I wonder to what degree your agency is involved in tracking civil society groups involved in climate change activities, for example.

Mr Irvine—The short answer to that is that ASIO activities are very much governed by the ASIO Act. It is our responsibility to keep track of potential threats to national security. It is not our responsibility to prevent or impede anyone from conducting non-violent activities, as you say, as constituents of the civil society. If you like, I will try to find it quite quickly. I can actually find you that section of the act, because I think it is indeed very important.

Senator LUDLAM—If you like. That might be worthwhile.

Mr Irvine—It is section 17 of the act. It says:

This Act shall not limit the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as prejudicial to security, and the functions of the Organisation shall be construed accordingly.

So ASIO must operate under those conditions. It is within our rights to observe and talk to people about whether or not we may have some security concerns, but if there are no security concerns then it is not within our responsibility to pursue those matters.

Senator LUDLAM—But, given the severity and seriousness of the threats that your staff are engaged in assessing and juggling day to day, how many staff hours or how many people do you have engaged following around and tracking people who are holding up banners?

Mr Irvine—I simply cannot answer that question. I do not know. But I would be surprised if it would be very many, if any.

Senator LUDLAM—Well, it does occur. I know of more than one occasion of constituents of mine being approached after not so much as trespassing but appearing at a facility with a banner.

Mr Irvine—And you are sure they were approached by ASIO?

Senator LUDLAM—I am absolutely certain they were approached by ASIO. They were very polite and non-threatening, but I just wonder to what degree the resources of the agency are being diverted away from the very serious objectives that you outlined in your opening statement to follow people around who might have a banner in a pack.

Mr Irvine—I cannot answer that in a precise way.

Senator LUDLAM—I approached the AFP about this earlier. The degree to which Australia's security and intelligence law enforcement agencies are chewing up the time and resources of taxpayers' money tracking peaceful protests is a bit of a preoccupation of mine. I wonder whether there is a priority in the agency, because I have noticed it specifically around climate related activities as opposed to, say, antinuclear activities, for example. There does seem to be a bit of a focus around climate change issues. Is that something you would be able to identify?

Mr Irvine—No. I do not think I would be able to identify that. Certainly, in my own view, I would not be focusing huge numbers of resources or any resources at all on lawful protest in relation to views on climate change in this country.

Senator LUDLAM—I could accept it if you said maybe very few resources, but it is certainly not none at all, because I am personally aware of these activities. So I just wonder whether you might be able to take it on notice. Obviously there are some people in your employ who are doing that.

Mr Irvine—I will take it on notice, although I would not be able to respond in any way that indicated operational activities or operational priorities of the organisation.

Senator LUDLAM—Although you have been reasonably helpful so far in identifying those priorities. Is there a problem in identifying the degree to which the agency is devoting resources to the peaceful activities of demonstrators?

Mr Irvine—I will take that on notice, because I really would need to think very, very carefully about what elements of ASIO activities would be put into the public arena. I refer you back to the section of the act which really does very, very tightly constrain what activities we can conduct.

Senator LUDLAM—The part of the act that you read to me referred to preventing people from undertaking certain activities. I guess what I am referring to here is clearly surveillance and intelligence gathering.

Mr Irvine—I certainly would not go into any detail about the actual operational activities, surveillance or otherwise, of the organisation.

Senator LUDLAM—I can appreciate that. I guess members of the general public as well as in the campaigning community, I suppose, would be a bit disturbed if there were substantial resources being drawn away from the priorities that you spoke of earlier in your statement along these lines. So civil society advocacy organisations, be they climate, antinuclear, animal rights or whatever they might be—people expressing their views in Australian society—are well aware that ASIO is taking an interest in them. I suppose that is the direction of these questions. To what degree is the agency tying up resources in that kind of work? If there is anything you are able to provide to us, that would be greatly appreciated.

The second thing that I want to ask you about is that there was a report late last year by Ian Carnell, the Inspector-General of Intelligence and Security, who made some recommendations arising from the Izhar Ul-Haque case. Is that a case that you are familiar with?

Mr Irvine—I am certainly aware of it, yes.

Senator LUDLAM—We will see where we go. Justice Michael Adams of the New South Wales Supreme Court said that the evidence produced in interviews conducted with Ul-Haque was inadmissible due to ASIO operatives committing offences of falsely imprisoning and kidnapping Mr Ul-Haque, amounting to ‘unlawful interference with the personal liberty of the accused’. Essentially, he was abducted by ASIO agents. The IGIS made recommendations about the way that ASIO should work with the Federal Police in future. I am just wondering what action has been taken within your agency since that report. Could you tell us about any changes in working practices in that regard, particularly between the AFP and ASIO.

Mr Irvine—ASIO welcomed the report of the Inspector-General of Intelligence and Security into the actions of ASIO officers involved in this matter. The inspector-general made seven recommendations regarding ASIO’s training, its policies and its procedures. Many of those recommendations were in fact consistent with steps that the agency had already undertaken independently of the inspector-general’s inquiry. We have taken the steps either through initiatives in the years since the Ul-Haque investigation conducted by ASIO or in the organisations responsible not simply to the inspector-general but to the Street review, which was a separate review conducted at the request of the Australian Federal Police. So most of those recommendations are already in train.

You read out the comments by Mr Justice Adams. I should say, however, that as we read the report of the inspector-general it was clear that he had carefully considered the observations made by Justice Adams and thoroughly investigated the facts underpinning them. The inspector-general’s findings in respect of the ASIO officers were in fact generally positive and there were no adverse findings about the propriety of ASIO’s conduct. Having made that point, yes, we are in the process of implementing, where appropriate, the recommendations.

Senator LUDLAM—Perhaps, then, I can predict what you would answer to the next question as to whether there were any internal disciplinary procedures undertaken or any form of internal review of the officers concerned in that case.

Mr Irvine—The answer to both questions is no. My sense is that the inspector-general’s report justified that response.

Senator LUDLAM—I wonder whether you can clarify for us how these officers could essentially be accused of ‘unlawful interference with the personal liberty of the accused’ and yet be cleared in your eyes and for there to be no need for any form of disciplinary action or internal review of those sorts of procedures.

Mr Irvine—There was a review, as you know, by the inspector-general and we acted upon his findings. But I do not think I would like to comment on the findings by the legal system.

Senator LUDLAM—Are the officers involved in that case who were mentioned in that report still in the employ of ASIO?

Mr Irvine—I understand yes, but I would have to check.

Senator LUDLAM—Maybe you could let us know if that turns out not to be the case, thanks. Have there been any notable reforms to the training and operations manual; specifically the standing operating procedure arising from that case?

Mr Irvine—I cannot answer that off the top of my head. I would have to check precisely whether there were changes to the doctrine.

Senator LUDLAM—That is something you would be able to tell us, though, if that were the case?

Mr Irvine—I cannot tell you exactly what the changes were—

Senator LUDLAM—I understand.

Mr Irvine—but the Inspector-General did recommend changes. In my earlier response I indicated that these were being implemented.

Senator LUDLAM—Thank you. My next question relates to telephone interceptions. As you would obviously know, Australians are vastly more likely than citizens of the United States to have their telephones tapped by various agencies. I think the figures that I have access to are about 12 months out of date, but I would just like to get a sense of proportion. Of the 3,287 warrants sought in the year to June 2007, for example, what proportion of those would be ASIO and what would be the various state and territory police agencies.

Mr Irvine—I cannot answer that question off the top of my head.

Senator LUDLAM—Is that something, again, that you would be able to provide to us on notice?

Mr Irvine—I am not sure. I would need to check very, very carefully on that matter to work out the extent to which it extends into actual operations.

Senator LUDLAM—Understood. If you are not able to provide us with the precise details then perhaps could you provide the degree to which these intercept warrants are requested by ASIO as opposed to other law enforcement agencies, just to give us an order of magnitude? If I were to ask you how many phones ASIO are tapping at the moment, you probably would—

Mr Irvine—I most certainly would not answer.

Senator LUDLAM—It was worth asking. Just to press the point, though, in the period that I am referring to, 2006-07, 2,929 warrants were issued in Australia compared with about 1,800 in the entire United States. So there is something rather peculiar happening in Australia that we are per capita vastly more likely to have a phone intercept than a citizen of the US is, which surprises me every time I come across that statistic.

Mr Irvine—I am surprised by those statistics too.

Senator LUDLAM—We are 23 times more likely to be bugged.

Mr Irvine—Particularly in relation to the United States.

Senator LUDLAM—That is what surprised me. Twenty-three times is the ratio. So if you are able to provide to us any information and if ASIO is only a tiny slice of those intercepts then I will not keep bugging you about it every time we get together.

Mr Irvine—Thank you.

Senator LUDLAM—Some of these next questions relate to questions that were submitted—

Mr Wilkins—Just on that point, Geoff McDonald is in charge of this policy section in the Attorney-General's Department. He might say something about the United States' practice.

Mr McDonald—Yes. Just on the United States' practice: you cannot make a direct comparison between the United States and Australia because in Australia we record very meticulously all the interception, be it by law enforcement agencies or other agencies. In the United States, the truth is that not all of it is recorded.

Senator LUDLAM—Thank you. Maybe it is an artefact of better record-keeping. But it would need to be very substantial underreporting in the United States to get close to that kind of ratio.

As I said, some of the next questions relate to questions submitted on notice to your agency that are now well outside the 30 days. I will see, if I may, whether you are able to provide us any information on them. Is ASIO aware of a report or a brief about Mr Mamdouh Habib which was prepared by Mr Abbas Abou Abdallah, an ethnic community liaison officer attached to the Bankstown police, dated 20 June 2001? Was this document provided by the New South Wales Police Service Protective Security Group? If so, when?

Mr Irvine—Firstly, I certainly cannot answer that question off the top of my head. Secondly, if it relates to the operational activities of ASIO in the collection of security intelligence information, I probably would not answer it.

Senator LUDLAM—Let me try this on you: was the document used by ASIO or other agencies, to your knowledge, in consideration of whether Mr Habib was a national security threat? Does that put that behind the firewall?

Mr Irvine—I would not feel it appropriate or proper to respond to a question which goes to the actual operational and intelligence activities of the agency in a public forum like this.

Senator LUDLAM—Is ASIO still monitoring Mr Habib, or is that case closed?

Mr Irvine—That also would be a classified response.

Senator LUDLAM—You would be aware of pretty widespread reports that Mr Habib was repeatedly tortured while he was in the custody of the United States officers and the degree to which Australian agencies were aware that this behaviour was occurring. I guess I am just interested in the Attorney-General's recent comments on Australia's commitment to the prevention of torture. Are you able to tell us how much ASIO knew about the treatment that was received by Mr Habib while he was in custody?

Mr Irvine—My understanding and advice is that all of the information that can be put into the public arena in respect of Mr Habib has been put in this and in other forums. I also have to say in respect of Mr Habib that at the present time he is involved in at least two legal proceedings. One I think just today was granted leave to appeal to the High Court, I understand, in respect of previous proceedings he has launched. There is another one currently which he has launched. Therefore, I would be very, very hesitant to say anything in this public forum that may in any way prejudice those two proceedings.

Senator LUDLAM—This goes to the comments that I raised right at the very beginning about how the taxpayer or indeed Commonwealth agencies or the minister can be sure that the agency is meeting expectations and actually performing well when all of this sort of material

is behind a firewall that we are not able to evaluate. I wonder who within the government is able to evaluate. Was it a colossal and rather disturbing waste of the agency's time or was it successful?

Mr Irvine—Are you referring to a particular instance here?

Senator LUDLAM—Well, I am referring to the entire ordeal that Mr Habib was put through, just as one notable example.

Mr Irvine—I do not think I can comment on Mr Habib's experiences with ASIO or with anyone else in this forum for the reasons that I have outlined.

Senator LUDLAM—In sessions with a couple of other agencies, I have asked the Federal Police and I think the DPP about the costs to the agencies pertaining to the prosecution of various cases. They have after a little time and collection of records been forthcoming. For example, I was told how much the AFP spent investigating Mr David Hicks. Are you at liberty to disclose for a couple of cases—perhaps we could start with Mr Hicks—what ASIO's costs were in each of those cases?

Mr Irvine—What do you mean by costs? Do you mean costs in legal proceedings, or do you mean costs in terms of operational activity?

Senator LUDLAM—The way that I have been phrasing it with the other agencies, essentially—the Department of Foreign Affairs and Trade was the other one—is costs either in staff time or actual direct costs to the agency. They have been able to provide it.

Mr Irvine—No. I do not think I would be able to give you those costs. I am not sure that it would be appropriate for an agency like ASIO to reveal those very, very specific figures on the one hand and I am not sure whether we would be able to break them down, if it were appropriate.

Senator LUDLAM—Is there a reason why, for example, the Federal Police and the department would be able to disclose that information but not ASIO?

Mr Irvine—Yes. ASIO is a security intelligence organisation. Our operational activities and the way in which we direct our priorities and our targets and so on must necessarily remain classified.

Senator LUDLAM—I have no further questions, but I look forward to receiving back some of the answers that you took on notice. Thank you.

CHAIR—Mr Irvine, I am not sure if we need you any longer. Senator Barnett, do you have questions?

Senator BARNETT—Yes. Thanks, Mr Irvine. All the best for your new job. It has only been six weeks, has it?

Mr Irvine—As I said to Senator Ludlam, I really am still inexpert.

Senator BARNETT—You are going very well so far. I have a few questions on PBS paper No. 1.2 of A-G's. It touches on some of the questions that Senator Ludlam talked about. It highlights that counterterrorism is a major priority for ASIO. On page 256, it says:

Border security is a key focus, and important enhancements have improved processes and connectivity with key partners, particularly for visa security checks.

Can you expand on that for us?

Mr Irvine—Yes, Senator. When people of various types apply for a visa to come to Australia—and it can be any sort of visa—those applications go to the department of immigration. Immigration will decide, I am not quite sure on what criteria, whether or not they should be referred to ASIO to conduct in whatever way it can checks as to the reliability and the potential security threat or otherwise of the applicant. We do a considerable number of these every year. Some 60,000, I think, last year were referred to us.

Senator BARNETT—Some 60,000?

Mr Irvine—I think the figure off the top of my head is around 60,000. I can probably get a more accurate figure by checking my notes. One of the issues has been the time that is taken to conduct security checks. You can imagine how difficult that can be when someone is applying for a variety of countries where they may not in fact have records that can be checked or whatever. So the checking of the records was taking far too long. One of the reasons for that was simply that it was impossible to get the information from Immigration to ASIO in a timely way. So a lot of the investment that you have referred to actually has gone into improving our IT links with Immigration to get those visa applications to us for security checking.

Senator BARNETT—Likewise, have those links been improved with the other enforcement agencies, such as the Australian Federal Police or Customs?

Mr Irvine—We are in the process of improving our links with the Australian Federal Police because, as you know, security intelligence agencies and law enforcement agencies do need to be able to communicate. There are still some issues, particularly with regard to the Australian Federal Police and ASIO, in terms of levels of classification of material that is being passed. That is something that we are currently working on. It was one of the recommendations in Mr Justice Clarke's Haneef inquiry.

Senator BARNETT—What involvement and what role do you have in combating the people-smuggling dilemma we currently are facing?

Mr Irvine—In a sense, ASIO is not what you would call a frontline agency on that particular issue. It is our job, however, to work with Immigration with people who have arrived in Australia. You are talking about boat people here. It need not be boat people but people who are applying for humanitarian or other visas. They can be referred to us for security checking. Indeed, we then do the security checks on people who have applied for asylum or humanitarian visas. That is our principal role in respect of people coming to Australia in that manner.

Senator BARNETT—Has that role increased or diminished in the last, say, 12 months or is it about the same?

Mr Irvine—Well, I think there has been an increase in those people coming to Australia and making those applications, so I would think, without looking up any particular figures, they would have increased in roughly the proportion that people have been granted visas.

Senator BARNETT—I notice that you responded to Senator Ludlam in terms of your view that a very substantial proportion of your effort relates to terrorism or counterterrorism measures. Is that correct?

Mr Irvine—That is true.

Senator BARNETT—I am just wondering if you can provide any perspective on the effort you put into border security measures.

Mr Irvine—Counterterrorism is also partly border security. But our principal effort is in working with the department of immigration, mainly on cases referred by the department of immigration, for advice on the security status of those sorts of people. That is our principal, if you like, border security function.

Senator BARNETT—I want to ask about the business liaison unit. You say in your report there is a strengthening engagement with the private sector through that business liaison unit. It currently has 621 subscribers to its website and has posted 190 reports. Can you describe how that works?

Mr Irvine—We provide advice to business in a variety of ways. Through our website and through the people who subscribe to it, we can provide general advice in relation to sometimes physical security and in relation to IT security. The nature of that advice is sometimes general. It is sometimes more specific. It is based on the expertise and the intelligence capability we have, along with other parts of the government, to understand the particular threats that come from cyber attack or whatever.

Senator BARNETT—And that is on fee-for-service basis?

Mr Irvine—I am not sure; I will have to check that.

Senator BARNETT—Can anybody subscribe? There must be criteria for the types of businesses and people that can subscribe to such a service.

Mr Irvine—I think anyone could subscribe. I would need to check that, though. There may be issues related to the size of the organisation and so on. But I will check that.

Senator BARNETT—Well, I am interested to know how that operates. Perhaps on notice—I know it is early in the role et cetera—you could provide further and better particulars regarding that service, such as what it does, its role, its objective, whether it is a fee-for-service, who can apply and, if so, on what criteria. It sounds a little more like an entrepreneurial initiative, which I must say sounds a little strange for an entity like ASIO, but I might be wrong. If it is, perhaps you can set out and tell us what sort of safeguards there are with respect to such an initiative, if that were the case.

Mr Irvine—I certainly would not regard it as an entrepreneurial initiative in terms of making money for the government or for the Australian public in that sense. I would regard it more as enabling business to tap into a capability that the government has. I would regard it in that way. I have just been passed a piece of advice from my people. No, it is free. There is no charge. I will follow up on the rest of the questions.

Senator BARNETT—Yes. Like the criteria to actually access the service. Let us move to my last question regarding page 264 on land and buildings. The estimated actual value in

2008-09 was \$76.4 million. In 2009-2010, it is \$63.579 million. That is a considerable drop. I am not sure if I am reading the figures incorrectly. Could you explain why that is.

Mr Irvine—I will take that question on notice because there is quite a specific amount that has been set aside as ASIO's contribution to the new building project. It is not ASIO's building being paid for entirely from ASIO's funds. This is a project which is essentially owned within the government by the department of finance, which will be putting forward the major funding for the building. We will ultimately rent it from them. But included in those figures for the new building are ASIO costs, which come under our budget, for things like the fit-out—for the special security hardening of the building that you need for a security intelligence service that may not be required in other buildings and so on.

Senator BARNETT—So it may refer to the contribution that you are making for those purposes?

Mr Irvine—Yes.

Senator BARNETT—I am with you. When do you expect to be in that property? How long is your lease?

Mr Irvine—Touch wood, Senator, we expect we will be in there within 3½ years.

Senator BARNETT—And the lease term?

Mr Irvine—I will need to check that. We are certainly looking at this to be the headquarters of ASIO into the long term, so whatever the current term of the lease would be. My expectation is that we would be in that building for several decades. The life of the building, I think, is 40 to 50 years plus.

Senator BARNETT—Sure. Will you be the sole entity in that building?

Mr Irvine—At the present time it looks as if we will, yes. Early in the proceedings there was the notion that one of the other intelligence agencies would come in with us, but other arrangements have been made. We certainly expect to be the sole tenant.

Senator BARNETT—And where will that building be? Has that been identified?

Mr Irvine—Yes, it has, Senator. In fact, the preliminary site buildings are already up. It is between Constitution Avenue and Parkes Way on, if you like, the Defence side of Anzac Avenue.

Senator BARNETT—Is this set out in some report somewhere or is this new information you are advising us tonight?

Mr Irvine—Certainly the broad plans and outline of the site plans of the building have been set out. There is a process now whereby they are going to the various planning and approval authorities within Canberra.

Senator BARNETT—And the cost?

Mr Irvine—I think, all told, it is \$606 million. Let me just check that. It is \$606 million.

Senator BARNETT—You have a good memory. Well done. I may have missed it. When was that decision announced, if it has been?

Mr Irvine—I am not sure that the nature of the building has been formally announced. I would need to check that.

Senator BARNETT—But \$606 million—and DOFA, as in the government, will be paying for the building. You will be making a contribution for what you consider appropriate for your inputs. Then you would be entering into a long-term lease, which you will get back to us on. It will be very long term with presumably options for further renewal.

Mr Irvine—With the sort of investment in a specialised building of this nature, Senator, you would expect it to be very long term.

Senator BARNETT—That is right. It is a very substantial investment. I suppose from the taxpayers' point of view, we want to make sure we get a return on funds invested. But presumably the government has done an analysis of that and it is all being done through DOFA. Is that right?

Mr Irvine—The Department of Finance and Deregulation is managing the project on behalf of the government and owning the project on behalf of the government.

Senator BARNETT—And plans are now going out to councils and that process is continuing? Do you think you would be in there within three years, all being well?

Mr Irvine—The time I have been given is 3½ years. I know that last month the department of finance lodged its environmental protection and biodiversity conservation referral with heritage impact assessment and all of those sorts of things. So the process is essentially underway.

Senator BARNETT—Sure. Have you got a date there? Three and a half years—from now?

Mr Irvine—Let us say from now, yes.

Senator BARNETT—And who currently owns the land?

Mr Irvine—I suspect, but I would need to confirm my answer to you, Senator, that it would be part of the National Estate because it is within the Parliamentary Triangle area.

Senator BARNETT—It is Crown land.

Mr Irvine—I suspect.

Senator BARNETT—You can check.

Mr Irvine—There could be a technical answer to that.

Senator BARNETT—You can check that on notice if you are happy to do that. Thank you very much, Mr Irvine, for being here; I appreciate that.

CHAIR—Mr Irvine, I do not believe we have any other questions for you. I thank you for your time and your attendance at estimates.

Mr Irvine—Thank you.

CHAIR—Congratulations again on the appointment.

Mr Irvine—Thank you very much.

CHAIR—I will now ask representatives from the Australian Commission for Law Enforcement Integrity to come to the table. We have finished ACLEI. My apologies. They were not crossed off. We will move to the Australian Crime Commission.

[8.51 pm]

Australian Crime Commission

CHAIR—I welcome representatives from the Australian Crime Commission to our estimates. Good evening, Mr Lawler. Do you want to start by making an opening statement?

Mr Lawler—Madam Chair, I do not wish to make a statement.

CHAIR—Ms Bailey? No. We will go to questions, then.

Senator BARNETT—Mr Lawler, welcome and congratulations on your appointment. When was that effective?

Mr Lawler—Thank you very much, Senator. The appointment was effective 1 March.

Senator BARNETT—Well, congratulations. I hope you are settling in well to the role.

Mr Lawler—I am. It is very challenging.

Senator BARNETT—Good. I am sure you are up to the challenge.

Mr Lawler—I hope so.

Senator BARNETT—We enjoyed our relationship with Mr Milroy over a long period of time.

Mr Lawler—Thank you.

Senator BARNETT—I would like to kick off with some questions. To start with, perhaps we could look at what is referred to as the OMCGs, or outlaw motorcycle gangs. There are obviously plans that you would be well aware of in South Australia in terms of legislation in South Australia and New South Wales. I understand other states and territories are looking at similar legislation to that which has been promulgated in South Australia and perhaps New South Wales. I wonder whether you could give us an update report on the role of the ACC in terms of what you are doing to investigate this area of crime. Then we will go from there. It has been a serious issue. It has had a lot of public attention over the last several months, with obviously a high profile murder and serious, high levels of violence and like activity. I wonder if you could provide some input in terms of the role of the ACC in combating this type of behaviour.

Mr Lawler—Yes. I certainly would like to make some comments around the issue of outlaw motorcycle gangs. Indeed, the ACC provided information to the parliamentary joint committee on this particular area of concern for the community. The outlaw motorcycle gangs are investigated under the high-risk crime group determination. We have worked very closely with a range of partner agencies in gathering intelligence and supporting partner agencies, particularly the state and territory police, in providing effective responses to outlaw motorcycle gangs. The gangs' activities range from social nuisance in residential communities through to involvement in some of the most significant criminal syndicates operating in Australia today. Our intelligence shows that there are approximately 39 active outlaw

motorcycle gangs in Australia, with some 3,300 patched members. Many OMCGs have a presence in more than one state and territory and have linkages to some of the most sophisticated and high-threat organised crime groups operating in Australia and internationally.

As the name suggests, they are involved in unlawful activities. Indeed, we are not talking about law abiding citizens who ride motorcycles in their spare time. I am talking about outlaw motorcycle gangs who are by their very nature a serious threat to our society. For example, the ACC has uncovered infiltration of some industries, such as the security and maritime industries, by outlaw motorcycle gangs. The ACC has responded directly to this threat since January 2007 with the establishment of the OMCG National Intelligence Task Force. Whilst this task force ceased in June 2008, the ACC's commitment to tackling OMCGs was consolidated by incorporating the work of the task force into the ACC board approved Serious and Organised Crime National Intelligence Task Force. The ACC has irrefutable evidence that OMCGs are connected in many ways and cooperate actively with sophisticated and high-threat organised crime groups operating in Australia and internationally. The focus of the new task force is concentrating on the highest risk crime groups. It exposes the intricate networks and connections of our most serious organised crime threats, many of which involve OMCGs in some form.

It is important, I think, that I emphasise to the committee that whilst the OMCGs pose a serious threat in their own right, it is their involvement with established and, in some cases, transnational groups that elevates their threat to the highest levels. The task force is developing national intelligence on serious and organised criminal activities, including those of OMCGs, to better guide a national investigative and policy response. This involves a coordinated effort of all state and territory jurisdictions. I must emphasise that the purpose of the OMCG National Intelligence Task Force and the Serious and Organised Crime National Intelligence Task Force is not for the ACC in and of itself to make arrests. Our role is to gather intelligence and target information and provide that irresistible target information in our partner agencies, particularly in the context of OMCGs, the state and territory police, for action, either with the ACC or by that jurisdiction, in a unilateral way.

To give you some context as to the amount of intelligence disseminations that have been provided by the ACC, there have been more than 1,500 intelligence disseminations between January 2007 and February 2009. The nature of this intelligence must be kept secret for obvious reasons. But we do know from our partner agencies that the ACC intelligence disseminations have greatly assisted their criminal investigations and subsequent prosecutions. So, Senator, there is a quick snapshot of the work that the ACC is doing in tackling the serious threat posed by OMCGs.

Senator BARNETT—Thank you, Mr Lawler.

Proceedings suspended from 9.01 pm to 9.14 pm

CHAIR—Let us reconvene this hearing of the Senate Legal and Constitutional Affairs Committee and our estimates process. We have before us the Australian Crime Commission.

Senator BARNETT—Thanks again, Mr Lawler, for that overview, which was very useful for our committee. Could you please perhaps briefly describe the main types of crimes that the OMCGs are involved in.

Mr Lawler—They are involved in all manner of serious and organised crime from narcotics, trafficking and distribution, serious fraud, money laundering to offences against the person—intimidation, serious assaults and, of course, highly publicised cases involving murder. So the full spectrum of criminality is what OMCGs engage in.

Senator BARNETT—But you mention their role in more high tech type crimes. Would you say they have moved from the traditional sort of personal abuse or violence and guns and drugs to more high tech crime? You mentioned money laundering, for example. Is that a bit of a trend that we are seeing now with OMCGs?

Mr Lawler—That is a trend, yes. We are seeing outlaw motorcycle gangs in a variety of forms—either members of outlaw motorcycle gangs operating outside of their outlaw motorcycle group but linking with serious and organised criminals or doing it within the group themselves. But we are seeing greater levels of sophistication and greater levels of connectivity with serious and organised criminals in a broader context and the capabilities and infrastructure that they have and can bring to the relationships between OMCGs and serious and organised crime groups. We are also seeing the use of professionals—accountants and other professional people—to aid OMCGs, particularly when it comes to issues of money laundering, as you have identified.

Senator BARNETT—You mentioned in your statement that there are 39 active OMCGs in Australia. You said that they are linking with organised crime groups in Australia and internationally. Can you provide an example of that? What types of organised crime groups are you referring to?

Mr Lawler—We are talking about the full gamut of organised criminality, organised crime groups—Asian organised crime groups and Middle Eastern crime groups, to name two.

Senator BARNETT—In Australia or overseas?

Mr Lawler—That is in Australia. But, of course—

Senator BARNETT—Primarily in Sydney and Melbourne?

Mr Lawler—I will just go back. The point of serious and organised criminality is that they will have in the very large majority of cases international linkages. Given the globalised nature of the world, that is what we see. But we also see connectivity between OMCG groups within Australia and internationally. Senator, I would not like to take that too much further but suffice to say that the ACC has intelligence that confirms that fact.

Senator BARNETT—Thank you for that. You referred to the fact that the task force was established in January 2007 and continued until June 2008. Then it morphed into the OMCG national task force in June 2008. I think you have been criticised for the cessation of that taskforce in June 2008. Do you have a response to that criticism?

Mr Lawler—Yes, I do. I think those that criticise the ACC about that misunderstand what in fact occurred. It was effectively a morphing, a transition, from what was a specific task force looking at outlaw motorcycle gangs. Bear in mind that the board of the Australian Crime

Commission actually approved the new endeavour. This is 13 of the most senior law enforcement persons in the country. After being presented with information and material by the ACC, they formed a collective view that that was the most appropriate way to tackle the problem and, at its heart, was the linkage that I have spoken about between OMCGs and serious and organised criminal activity. We were seeing that morph together. It was believed by the board that the Serious and Organised Crime National Intelligence Task Force more appropriately described where the focus needed to be. Indeed, I think that was a very good decision of the board.

Senator BARNETT—Obviously, there is a difference of opinion in that regard. I want to ask about the highest risk crime groups. Can you describe them?

Mr Lawler—Well, amongst those are the outlaw motorcycle gangs. Bear in mind that the Australian Crime Commission targets the most serious and highest risk within those particular groups, so they are a significant part of that particular determination. But there are other serious and organised criminals within a variety of other crime groups that are being targeted. Of course, I am not able to disclose who it is we are targeting because that would defeat the purpose of the Crime Commission's activities.

Senator BARNETT—You mention intelligence dissemination reports of some 1,500-odd from June, I think it was, 2007 to February 2009. It sounds like a high number in that regard. Would you say that would be one of your key performance indicators in terms of intelligence dissemination reports?

Mr Lawler—Yes, it is. It is important for the community to understand the quantity of information reports that we provide and disseminations across a whole range of information that we gather, be it through the ACC's intelligence collection processes or indeed through the coercive hearings that are performed by the Australian Crime Commission. But equally important in the context of quantity is quality and what and how have those disseminations assisted our partner agencies in delivering against their outcomes. Have they aided the agencies that we work with in their endeavours? Indeed, the data that we receive back from the agencies indicates that it does consistently aid them very significantly in their operational delivery.

Senator BARNETT—I would like to now ask about the options. What do you have in the toolbox, as has been referred to previously, in terms of combating the OMCGs in this country? We have seen the South Australian legislation, which some would say is very strong. Some would say it is even over the top in terms of outlawing and combating the OMCGs. I asked this question in February and it is now mid-May. Can you provide any further advice with respect to the success or otherwise of that legislation, knowing full well that the legislation has been passed? I think it is the Finks who have been proscribed in South Australia. There is now litigation, I understand, afoot. Can you advise of any trends that are building in terms of bikies moving perhaps from South Australia to other jurisdictions or any other trends that you might wish to share with the committee?

Mr Lawler—Senator, I think the ACC responded to one of your questions on notice on this particular point and indicated at the time—23 February was the date of the question on notice—that it was still too early to understand the full ramifications of the legislation in

South Australia and, indeed, elsewhere. That is still the case. We have seen legal challenges already to the legislation in South Australia. So my advice is that it is at too early a stage to make definitive statements around the effect of the legislation or the likely flow-on effects from it. I will say this: in treating it as serious and organised criminality, what we see is that crime groups are resilient. Crime groups have the flexibility to be able to navigate around attempts by governments and their agencies to curtail their unlawful activity. So it will be a matter of constant review, revision and reflection on the activities.

Senator BARNETT—So you do not have a view as to the merit or otherwise of the New South Wales legislation?

Mr Lawler—I do have a view. The view is that any activity that makes it more difficult for serious and organised criminals, including OMCGs, to undertake their activities is to be welcomed.

Senator BARNETT—But you would want to at all times balance the rights and the civil liberties of individuals in that regard, would you not?

Mr Lawler—The civil liberties of all Australians and the rights of all Australians are paramount. But these activities—the activities of the outlaw motorcycle gangs—are impacting the rights of the normal Australian citizen, as we have seen on many occasions.

Senator BARNETT—Sure. Have you put forward any proposals to government to combat OMCGs in terms of options?

Mr Lawler—The ACC has a very close working relationship with the Attorney-General's Department. Indeed, the Secretary of the Attorney-General's Department is on the board of the Australian Crime Commission. Issues of legislation are matters that are regularly brought to the attention of the ACC board. Indeed, the ACC regularly raises matters with the department around serious and organised criminality.

Senator BARNETT—Have you done that recently?

Mr Lawler—We regularly do it in discussions with the department.

Senator BARNETT—Does the ACC have meetings with the department to discuss and put forward options that you might consider to be of merit?

Mr Lawler—Yes.

Senator BARNETT—How often would you have those meetings?

Mr Lawler—The contact with the department is very regular.

Senator BARNETT—At least monthly?

Mr Lawler—At least monthly.

Senator BARNETT—Are there a range of options that you have put to the department for consideration by the department and/or the minister in the last month?

Mr Lawler—There are a range of issues that the ACC has been discussing with the department, yes.

Senator BARNETT—What about the options for reform in terms of combating OMCGs in Australia?

Mr Lawler—These are the sorts of matters that we are talking about and, indeed, that the board of the commission is focused on.

Senator BARNETT—Would you say they are under active consideration by the department?

Mr Lawler—Yes, I would.

Senator BARNETT—Thanks for that. I do not have any more on OMCGs, but I have a range of other areas for questioning, if we want to move off OMCGs.

Mr Wilkins—Are you interested in what is happening on the legislative side?

Senator BARNETT—Yes. If you could, that would be good.

Mr Wilkins—There are a number of things, as I said, coming up in the lift. You would be aware that SCAG is now progressing a number of measures. The Attorney took to SCAG a whole range of matters, some involving Commonwealth-state cooperation and some just notifying the states that the Commonwealth would be doing things. But there are measures that permit the coercive questioning of individuals to assist with the investigation of organised crime offences; consorting or similar provisions that prevent a person associating with another person who is involved in organised criminal activity as an individual or through an organisation; measures that enable police to engage in control operations; and measures that enable the use of assumed identities to facilitate investigations and intelligence gathering. Some of these are matters that have been raised by the ACC. There is also legislation to permit the use of surveillance devices for the purposes of investigating serious and organised crime; witness protection legislation; asset confiscation legislation to enable a court to restrain and a person's assets and render them forfeit where they are tainted; model cross-border investigative powers for control operations; and legislation on assumed identities, witness identity protection and surveillance devices. So there is a great list of things here.

The Commonwealth is looking at, in particular, strengthening the criminal asset confiscation, including unexplained wealth provisions. To the extent that is practical and effective and having regard to the constitutional powers, we would look at consorting or similar provisions that prevent a person associating with another person who is involved in organised criminal activity as an individual or through an organisation. And we are enhancing police powers to investigate organised crime, including model cross-border investigative powers for controlled operations and assumed identities and witness identity protection; facilitating greater access to the telecommunications interception of criminal organisation event offences; and addressing the joint commission of criminal offences. They are some of the things that the Commonwealth is working on by itself but also with the Standing Committee of Attorneys-General. At the moment, an Organised Crime Strategic Framework is being put together. It is imminent. The Attorney and the minister will be looking at that shortly.

Senator BARNETT—What does that Organised Crime Strategic Framework mean?

Mr Wilkins—That would be looking at all the agencies and all the information and intelligence that is held by the Commonwealth and, to some extent, the states. It is looking at a way forward. The ACC would be a centrepiece of that in terms of providing a hub for

intelligence. But, as you can imagine, there is a lot of intelligence sourced from a lot of different organisations within the Commonwealth and within the states. So intelligence is one side of it. Another important aspect of that will be attacking profits of crime—going after the proceeds of crime—and enhancing the capacity of jurisdictions to pursue that. There will be to some extent institutional changes but to some extent law reform changes of the sort that I have just mentioned as well. The idea is to see it as a strategy involving a number of organisations—the AFP, the ACC, state police forces and the Attorney-General’s Department. AUSTRAC is part of that too, as you can imagine.

Senator BARNETT—Do you have a working group working through those issues?

Mr Wilkins—I have a task force in my department that is working very closely with the other agencies as well, yes.

Senator BARNETT—What is the name of the task force?

Mr Wilkins—I guess we call it the Organised Crime Strategic Framework task force. Have you given it a name, Elizabeth?

Senator BARNETT—When was that established?

Mr Wilkins—I thought that the name was the least important thing.

Senator BARNETT—No, it is helpful to know the name

Mr Wilkins—I think it has been working for several months now.

Ms Kelly—Since February.

Mr Wilkins—Since February.

Senator BARNETT—And they would have regular meetings—monthly meetings?

Mr Wilkins—They actually work all the time on this. These are staff working full time on this. They consult on a regular basis.

Senator BARNETT—Do they meet monthly with the AFP and ACC?

Mr Wilkins—I assume so. And it is through HOCOLEA, which is the group of law enforcement agencies across the Commonwealth; that includes agencies outside the Attorney-General’s portfolio, such as ASIC and the tax office. APRA would be there. There is a variety.

Senator BARNETT—It is a very comprehensive effort that is being considered to help combat this organised crime activity.

Mr Wilkins—Yes.

Senator BARNETT—Is that list that you read from a SCAG working group document?

Mr Wilkins—That is actually from a resolution of SCAG. I am happy to provide that to you.

Senator BARNETT—That would be useful. Is that already public?

Mr Wilkins—Yes, it is already public.

Senator BARNETT—Thank you for that. In terms of the federal initiative, you obviously identified a few of those more specifically, for which I thank you. Can we envisage further legislative reforms in this arena this year?

Mr Wilkins—Hopefully.

Senator BARNETT—Thanks again for that. I appreciate it. I want to go to Project Wickenby. I have asked about this at previous estimates; indeed, I asked the tax commissioner about the status at the April hearing in Brisbane. Could you provide an update on the status of Project Wickenby, particularly since Philip Egglshaw claimed his laptop was seized illegally, potentially rendering subsequent investigations unlawful. The ATO has since claimed that investigation was a breach of privacy. I know there is litigation afoot, but could you provide a status report, Mr Lawler?

Mr Lawler—Yes. Thanks very much, Senator. I can. The Operation Wickenby investigations are continuing. Notwithstanding the complexity of the cases, their international links and the nature of the alleged offences, the ACC is satisfied that the cases are progressing well. We have currently nine ACC investigations. To give you an understanding of some of the work that is going into those particular activities, there have been 193 notices to obtain evidence issued and 231 summonses to appear issued.

Senator BARNETT—Over what period?

Mr Lawler—This is since the project commenced. It ends in March 2009. So since the commencement of program Wickenby.

Senator BARNETT—Have you got a date for that? We are talking a couple of years, is it not? Several years?

Mr Lawler—It is 2005-06, I am being advised. There have been 223 examinations completed, 58 search warrants sworn and executed and 43 mutual assistance requests in 14 countries embarked upon. There are a range of AFP investigations and, of course, ASIC investigations. In the total Project Wickenby, there have been 42 people charged. One person has been discharged or found not guilty. Three persons have been convicted. There are three custodial sentences, and 37 persons have been prosecuted for tax offences. Whilst principally the remit of the Australian Taxation Office, it is important to note that the total tax liabilities raised as a result of the total Wickenby activity is \$299.61 million.

Senator BARNETT—How much collected—that is, the tax liability?

Mr Lawler—I understand there has been just on \$100 million—\$99.56 million—collected. There is also a compliance dividend that has been identified of \$74.76 million. The total value of assets restrained is \$75.7 million. So there are some very significant financial outcomes for the people of Australia from Project Wickenby to date. I am advised that additional amounts in all of those categories can be expected into the future. They, Senator, are the key highlights of project Wickenby. On the matter you raised around the laptop and the current court proceedings, I am in a difficult position on commenting on court matters that are the subject of litigation, for all the reasons that I am sure you would be fully aware of. So with your indulgence, Senator, it is probably not appropriate that I answer that question.

Senator BARNETT—Not a problem. Do you have a figure before you in terms of the investment the taxpayers made to the ACC to undertake project Wickenby from day one?

Mr Lawler—Yes, I do. To 31 March 2009, expenditure to date is \$32.84 million. The ACC board has approved expenditure of an estimated \$6.5 million between September 2008 and September 2009.

Senator BARNETT—Does the department have a figure for all the other agencies with respect to Project Wickenby? Would you be happy to take that on notice?

Ms Kelly—We can take that on notice, Senator.

Senator BARNETT—You obviously have the AFP, and the tax office is a separate entity. Can you pull that together in terms of a total investment by the taxpayer since Project Wickenby commenced in, I think, 2005-06?

Ms Kelly—We certainly have that for our portfolio and we can make inquiries to find it in relation to the ATO.

Senator BARNETT—Thank you very much. That is all on Project Wickenby, unless there is anything else you would like to add. I will move now to the Northern Territory intervention measures. You have been looking into crimes against children, which was a significant problem in the places the Northern Territory intervention measures entered into. Many cases have been uncovered by the work of the ACC. We would like to know if they have been resolved, or are children still in just as much danger as before? That is the first part in terms of the role of the ACC. Secondly, there has been some anecdotal evidence that there has been an increase in violence and abuse in the larger towns, such as Darwin and Alice Springs, compared with the smaller towns. There has been a shift from the smaller towns to the larger towns. I wonder if you would care to respond to that view or whether you think that is not an accurate assessment.

Mr Lawler—I might start, Senator, by just establishing the context for the national Indigenous intelligence task force, the national taskforce, and then the accompanying board-approved special intelligence operation, the Indigenous violence and child abuse operation of the ACC, which will provide to the board a key report on the picture of crime in Indigenous communities at its 10 June board meeting. There has been, Senator, as you allude to, some misunderstanding reported in the press about the role of the Australian Crime Commission and, indeed, commentary to suggest that the Crime Commission has not made any arrests. It was never the intention of the Crime Commission to make arrests in such matters. It was about not only gathering the national intelligence picture of crime, particularly on violence and child abuse, and reporting that to the relevant agencies for action in the context of disseminations, as we spoke about in the context of OMCGs, but also providing the key report to the board to advise them of that activity. There will be following that report to the board a series of reports which will focus on regions which have been the focus of the NIITF intelligence gathering activity. Those areas include Central Australia, the top end of the Northern Territory, Cape York and several areas in New South Wales. The ACC anticipates that these reports will be reported and provided to the intergovernmental committee on the ACC later in the year.

Senator BARNETT—Mr Lawler, I am just aware of the time so I might be a little more specific with some of these questions, if I can. How many ACC officers are currently working on the NT intervention measures?

Mr Lawler—We currently have 25.

Senator BARNETT—Are there any plans to change the level of staffing arrangements?

Mr Lawler—Yes, there are.

Senator BARNETT—Could you explain those changes?

Mr Lawler—We intend to increase that by three to four in the coming months.

Senator BARNETT—So your plan for this time next year would be sort of 28 or 29?

Mr Lawler—That is correct.

CHAIR—Mr Lawler, does the work also extend, though, to areas other than violence and child abuse? Does it also go to, say, trafficking in drugs or carpetbaggers in the arts industry?

Mr Lawler—Yes, it does. It picks up the full spectrum of criminality in Indigenous communities, including an abuse of power. It has focused on information sharing in accordance with its original remit.

Senator BARNETT—How many cases of child abuse have been uncovered in the past 12 months?

Mr Lawler—I am not able to answer that specifically, Senator. As I indicated, the picture of crime in Indigenous communities report will be provided to the board. But it is fair to say there are clear examples of child abuse and violence being uncovered. Indeed, I will take you to a series of data around the intelligence sharing which goes to the point. There were 652 disseminations to law enforcement and government agencies; over 1,200 reports uploaded onto the Australian Criminal Intelligence Database; and 13 intelligence assessments produced on situations or persons of interest.

Senator BARNETT—Of the 652 disseminations, what are the main areas of activity for the ACC?

Mr Lawler—They would be matters of serious crime in Indigenous communities.

Senator BARNETT—Can you be more specific?

Mr Lawler—I cannot be, no.

Senator BARNETT—Are we talking about child abuse as one of the major areas of activity?

Mr Lawler—It is one of them.

Senator BARNETT—Is it the major area of activity?

Mr Lawler—I would not say it is the major area, no.

Senator BARNETT—Is that something that you could take on notice and advise the committee? Even broad percentages. I think that is an important area. Could you take that on notice, if you possibly can?

CHAIR—Put it this way, Mr Lawler: if it is going to compromise the investigations, that might be difficult.

Senator BARNETT—I cannot see how it would, frankly.

CHAIR—Will the report that you mention that will be completed and tabled on 10 June become a public document?

Mr Lawler—It is unlikely to be in the first instance. The report is a classified document. It is a highly classified document. A lot of the intelligence information comes from the coercive hearings. That is governed under the ACC Act. There are very strict protections in place, properly, so that that information is not—

Senator BARNETT—Who does that go to, Mr Lawler?

Mr Lawler—The report will go to the ACC board on 10 June.

Senator BARNETT—And then who else?

Mr Lawler—Well, that will be subject to the board's deliberation and consideration. But I indicated that the IGC will likely receive a copy of the report or a summary later in the year.

Senator BARNETT—And you would envisage that the Attorney-General would also receive it?

Mr Lawler—I would expect so. But our responsibility in the first instance is to report to the board.

Senator BARNETT—So we cannot really get a grip on the number of cases that have been referred to the department of FaHCSIA, for example. Can you advise on that?

Mr Lawler—Not at this particular point, Senator. What I can say around the findings is a broad statement which points to a large disparity between the true nature of child abuse and violence issues in some Indigenous communities and what is officially known by government through the limited data currently available to it. This inaccurate picture ultimately affects the efficacy of program responses to address child abuse and violence issues in Indigenous communities.

Senator BARNETT—Can you report on any trends that you are aware of? Are you seeing success in terms of combating the high levels of crime and criminality, as you refer to it? A lot of us are concerned about that. Surely you must be able to report to us on trends that you are seeing as a result of the intervention.

Mr Lawler—The report has not specifically focused on the trend analysis. Its focus was particularly on the scope of the problem. The remit was: what is the extent of crime, particularly violence and child abuse, in Indigenous communities? It was to see if we could gather in an empirical way a very clear understanding of what that looked like now rather than sort of trying to track it over a number of years. Of course, we have not been in the process all that long.

Senator BARNETT—Mr Wilkins, would the department be aware or have information that would assist the committee in advising trends in terms of the success or otherwise of the intervention?

Mr Wilkins—I will take that on notice. A lot of our information and data we would be seeking from the Australian Crime Commission. But I will see if we have any further information.

CHAIR—Or the Northern Territory police force, no doubt.

Mr Wilkins—I see that the ACC talks to the Northern Territory police.

Mr Lawler—Certainly, Madam Chair, each of the state and territory police forces would have data and trend data around issues of Indigenous violence and child abuse and other crime in Indigenous communities. The role of the ACC was to bring together the national picture.

Senator BARNETT—This is the issue, with respect, that I am raising. Surely, you must have an understanding as to whether there has been an increase or a decrease in the levels of theft, assault, child abuse, verbal abuse and like violence in the Northern Territory. You must have some indication one way or the other, be it either Mr Lawler or the department through Mr Wilkins.

Mr Lawler—The report, as I understand it—again, it needs to go to the board for proper consideration and endorsement; it is a draft report—goes to the issue of the seriousness of what we are seeing rather than doing work specifically around trend data.

Senator BARNETT—Is the level of seriousness increasing or decreasing?

Mr Lawler—I would need to take that question on notice as it relates to the specific areas.

Senator BARNETT—I am happy for you to take it on notice because we are not progressing a great deal at the moment, with respect. Does Mr Wilkins wish to respond any further?

CHAIR—I want to interrupt here again, Senator Barnett. You might not be aware, Mr Lawler. Last week, the Senate Select Committee on Regional and Remote Indigenous Communities had hearings in Millingimbi, Katherine and Darwin. We took evidence from the Northern Territory police in Darwin for an hour and a half. They went through these trends and indicated where their level of policing action has increased, essentially, or decreased. They did make the point, I just want to say—which you might not be aware of—that it was very hard for them to ascertain whether or not the level of child abuse had increased because it is taking victims a long time to have the confidence and trust to confide in the police and report to the police. They have had two or three breakthroughs in the course of 12 months, which may or may not lead to prosecutions. But there are many other cases.

I think it is quite clear, for people reading the *Hansard*—the assistant commissioner up there took us through very carefully their stages of deliberation—how they develop a trust with people and how they encourage victims to actually get to the point where they want to report. I do not know if that helps you. It certainly helped me. I did not understand that getting to the point which leads to a prosecution can take years. In fact, it was 12 years in one instance—this was cited to us—before a victim was prepared to lay charges. So I think it is a much more complex situation. I am sure your liaison with the Northern Territory police indicates that.

Mr Lawler—Indeed, that is right, Madam Chair. You go to the very heart of some of the difficulties in this area. Part of that is fear and intimidation, and some of it relates to cultural or other issues. But the issue of reporting is a very difficult and, like you say, complex issue.

CHAIR—Do you have an indication in the last two years, for example, of the number of people who have actually been prosecuted for child abuse? That data must be around, surely.

Mr Lawler—That data is certainly available. I do not have it before me here. But that data would be available.

Mr Wilkins—Madam Chair, I think FaHCSIA might have that data. I think they have quite a lot of this information, actually.

CHAIR—So we could ask that Friday week at the Indigenous affairs specific estimates day?

Mr Wilkins—Yes.

Senator BARNETT—Mr Wilkins, did you want to say anything further?

Mr Wilkins—No. That is what I was going to point out, Senator. FaHCSIA also has a lot of this information. Maybe you should take it up with them in that context.

Senator BARNETT—I am more than happy to, Mr Wilkins. With respect, we are here at the A-G's portfolio. We are talking to the ACC. We know you are the department secretary. The government is making decisions about the future of the NT intervention and how it should roll out into the future. It must be making those decisions based on certain information which it has before it. I am trying to find out what that information is so that we can make the best decisions possible on the best information available.

Mr Wilkins—What I am saying, Senator, is of course the government is. I am not the government, but the government's minister on this issue of the Northern Territory intervention, as you know, is Senator Jenny Macklin. The lead agency is FaHCSIA on that. We have supplied you information. I think the ACC has been more than happy to tell you what we know.

Senator BARNETT—Well, we know what we do not know. I will not go into the full gamut of the quote of the secretary of Defence. Anyway, it does remind me of his quote. I have two other things.

Senator FIELDING—I will follow on from that. How far has the funding for the ACC been guaranteed for?

Mr Lawler—We have funding for the special intelligence operation through until 30 June 2010.

Senator FIELDING—That was, I think, originally to finish up this year and it was extended. Is that right?

Mr Wilkins—That is right.

Mr Lawler—Correct.

Senator FIELDING—There were some reports in the newspaper that it was actually going to cease and then it was confirmed as being extended. Could the department or the

minister explain to the committee why it was extended? What was the decision process? On what basis was it extended?

Mr Wilkins—Well, I think that is really a question you need to put to the ministers concerned in those discussions. I assume they considered that the work was not yet concluded.

Senator FIELDING—Was that the recommendation from the department?

Mr Wilkins—The department was not involved, Senator.

Senator FIELDING—Are the level—

Senator Ludwig—One of the challenges in this area, of course, Senator, is that many witnesses—I think you have heard evidence from Senator Crossin—do not come forward. They fear to bring it up. There is also reluctance to overcome these impediments. The ACC board authorised the formation of a special intelligence operation focusing on national Indigenous violence and child abuse. It was to expire on 30 June 2009. It has been extended because, of course, I think as Senator Crossin has rightly pointed out, it does take time to gather the information to obtain the confidence of witnesses, to bring them forward to provide that evidence. These are not easy investigations. I am sure Mr Lawler could confirm that. Of course, the preliminary analysis of the information received confirms that the use of coercive powers is effective. It is effective in assisting. It does help in enabling the task force to build an accurate picture, an evidence based picture, of what is actually happening there. But the use of coercive powers, of course, is not a quick process either. It does take time. You need examiners. You need trained examiners. You need the people in those locations as well. Of course, the Indigenous communities are disparate. They are spread across the Northern Territory. They are not in one location. So it is not like an urban environment either.

Senator FIELDING—One of the key things that the ACC is trying to do is get a handle on how big the problem is, I suppose, with the violence and abuse. Is the actual level that you are finding out less than what has been reported or about the same? That is not going to the heart of any intelligent information. That is just getting a bit of a feel for it. Is it below what has been reported before? Before the ACC got involved in this, there was a certain level of reporting going on. Have you found that what you have discovered since you have been involved, is it about the same as what has been reported? Or is it less or is it a lot more?

Mr Lawler—There has been under-reporting.

Senator FIELDING—By just a little bit or by a lot? You do not need to go any further than that.

Mr Lawler—There is a large disparity.

Senator FIELDING—I am a big supporter of this particular role of the ACC; I will be frank on the record. I am a big supporter of it, and I was very pleased to see it being extended. This is a serious issue and I want to encourage this continuing on until we get to the absolute bottom of it. My sense was that there is a lot more than what was being reported. So I look forward to seeing what can be shared more publicly, because I think we do need to share this publicly—what you can disclose—because the public are interested in this particular issue. It will be interesting what can come out of the 10 June board meeting and what public statement

can be made after that. I think that the public need to get a feel for the size of the issue, and then we can see how much more support we should be giving you folks to make sure that we get to the bottom of it.

CHAIR—Senator Barnett, do you have any more questions for the Australian Crime Commission?

Senator BARNETT—Yes, I have two more. Mr Lawler, if possible, could you please provide the current level of staff that you have at the ACC? I refer to your answer to a question on notice, No. 109, for which I thank you, where you provided staff numbers as at 30 June 2007 and total staff numbers on 28 February 2009. So I have got those figures. I am asking for the latest, most up-to-date figures.

Mr Lawler—As of 30 April 2009, the ACC has 584 staff.

Senator BARNETT—That is a fair drop!

Mr Lawler—I am able to give you a breakdown of those staff if required.

Senator BARNETT—Yes, please. That is a big drop from 610 on 28 February 2009, but let's get a breakdown and we will work out where they have come from.

Mr Lawler—That involves 522 APS staff, 10 contractors, 52 secondees, a range of different secondees within those 52—we have got quite a complex array of employment regimes—and, in addition, 20 staff from other agencies working with the ACC in joint operations and task forces.

Senator BARNETT—Other Commonwealth agencies?

Mr Lawler—Including Commonwealth agencies.

Senator BARNETT—You said 20 from other agencies, so would they be from other Commonwealth agencies?

Mr Lawler—Yes. Additionally, as operational imperatives require, state agencies will assist, and we will assist state agencies in the delivery of particular operational outcomes, be they search warrants or other sorts of operational activity.

Senator BARNETT—Of the 522 staff, are they all paid for by ACC?

Mr Lawler—Of the 522, they are.

Senator BARNETT—And the 10 contractors are paid for by ACC?

Mr Lawler—Yes.

Senator BARNETT—Do you mind me asking what role those contractors have?

Mr Lawler—Principally they are IT contractors.

Senator BARNETT—And the secondees are obviously from state and territory and police forces, and are they all paid for by the states and territories, or does the ACC pay for a portion of the 52?

Mr Lawler—We have 24 standard secondees funded by the jurisdictions, nine under the ACC Act and 19 under the Public Service Act.

Senator BARNETT—Who pays for those 19?

Mr Lawler—The ACC.

Senator BARNETT—So you have 28 that are actually funded by the ACC and you have 24 that are funded by state and territory jurisdictions.

Mr Lawler—That is correct.

Senator BARNETT—I think that has got to the bottom of that one—it is quite a drop, isn't it? Again regarding your consultancies, my last question is set out on the department's answer to a question on notice of mine—attachment A, No. 78, Knowledge Pond Pty Ltd, Homeland and Border Security Review, \$20,625, direct source. What is the status of that report?

Ms Bailey—That was a report that was completed sometime late last year, as I understand.

Senator BARNETT—What did it say?

Ms Bailey—I think it was working with the ACC to pull together their submission to the Homeland and Border Security Review carried out by Mr Smith. That is my recollection.

Senator BARNETT—Did they make recommendations with respect to border security matters and people smuggling?

Ms Bailey—I would have to take that notice. I have not actually read the report. The ACC put forward a submission about areas that the Smith review is looking at that might be better aligned or done better, but I do not have the complete detail of what was in the report.

Senator BARNETT—Better aligned or done better by the ACC?

Ms Bailey—Our role and other people's roles—I guess it is an observation about how we could do better and share more information. As I recall, it was mostly around information sharing.

Senator BARNETT—Do you have terms of reference?

Ms Bailey—I would have to take that on notice. We had done some considerable work and wanted to pull it together in something of a succinct document, as I recall.

Senator BARNETT—The document says the duration was one month. Would that be right—so quick?

Ms Bailey—It was reasonably short term.

Senator BARNETT—It is a fair bit of money for one month, but there you go. Who is Knowledge Pond Pty Ltd?

Ms Bailey—Who are the principals?

Senator BARNETT—Yes, the consultant.

Ms Bailey—I am searching my mind—the name is on the tip of my tongue, but I just cannot recall it.

Senator BARNETT—Could you take that on notice please? Could you also take on notice to supply the terms of reference and the report? If that is not possible, could we have the executive summary? If that is not possible, could we have further and better particulars about

the report? I understand some of the areas may be sensitive if it is talking about security matters, so I am happy for you to take that on notice.

Ms Bailey—Yes.

Senator BARNETT—Finally, I notice you outsource some of your legal services, but is it fair to say that most of your legal services are undertaken by the Australian Government Solicitor? I see you had Sashi Maharaj as a direct source for legal services for 12 months, at \$249,996. How do you operate and what is the nature of that?

Mr Lawler—Ms Maharaj is the senior counsel who has very significant expertise in ACC litigation, specifically around its act and the use of coercive powers—quite a speciality. She has retained counsel to assist us in what is a growing number of legal challenges against the ACC and against the use of its powers.

Senator BARNETT—Does she work full time as a retained counsel for ACC?

Mr Lawler—Not full time, but she works on a retainer basis and represents the ACC in its major litigations.

Senator BARNETT—And apart from that you use the Australian Government Solicitor.

Mr Lawler—We use the Australian Government Solicitor. You will see Blake Dawson Waldron has also been used. Additionally, the ACC has quite a significant legal capacity within the organisation itself that provides a range of legal services.

Senator BARNETT—Thanks again, Mr Lawler.

Senator FIELDING—Could you provide an update on the Victorian established criminal networks special investigation and tell me where the funding is at for that as well.

Mr Lawler—The Victorian established criminal networks has been work that the ACC has been doing in partnership with the Victoria Police, particularly assisting the Piranha investigation in Victoria in relation to a range of serious and organised criminal entities. That matter is for consideration by the board at its 10 June meeting to provide further assistance to the Victoria Police in that same matter.

Senator FIELDING—The board meeting is 10 June—is that right?

Mr Lawler—That is correct, in Melbourne.

Senator FIELDING—The funding is until 30 June 2009 at the moment—is that right?

Mr Lawler—As I understand that particular matter it is funded internally from out of our base appropriations.

Senator FIELDING—The annual report is a bit old from that point of view but it gives a deadline of 30 June 2009. What does that mean just so I can actually understand it from there?

Mr Lawler—Under the act the board has the statutory responsibility of establishing determinations and indeed the use of coercive powers in respect of that special investigation or special intelligence operation if the board so considers that the statutory requirements are met. The board will, at its 10 June meeting, consider an application for the extension of that particular determination to further assistance the Victoria police. What the board ultimately elect to do will be a matter for the board on 10 June.

Senator FIELDING—It is just a governance issue from my point of view. There is not a lot of time. Why was the extension not considered at the previous board meeting? It seems odd to me, that is all. I will go a step further. When it came to the Northern Territory issue I would imagine there were a lot of staff on hold about whether they still had a job in that area going beyond a certain date. This is a bit different because this is funded internally, but it seems strange that the decision-making process seems to be very tight on pretty basic things like 10 June when it expires on 30 June. I would have thought it would have been considered at the previous board meeting about whether to extend things on beyond June.

Mr Lawler—I take your point, but that is certainly the way it has been done to date. Certainly, the board had been able to meet those time lines and indeed the ACC continue on with the work as required. There have not been those difficulties albeit I appreciate what you say that there might be uncertainty with staff as to whether particular investigations will continue to be authorised by the board. That is something that we manage in the context of our daily activities.

Senator FIELDING—I imagine there would be a few staff always concerned about whether they are continuing on. Making decisions too early is ridiculous, but making them so late says to me there is something not quite right with the process. I am happy for you to think about that.

Mr Lawler—That is true specifically in relation to tied funding. Where the activity is coming from base appropriations, I think it is a slightly different circumstance.

CHAIR—Senator Fielding, is that all you have?

Senator FIELDING—That is it, yes.

CHAIR—Mr Wilkins, I understand that at the end of last night you were going to try and get some answers to some questions for us. Do you want to provide us with those answers now?

Mr Wilkins—I could read them out now, if you like. The first matter had to do with legal costs, as I recall. I will put it this way, Senator: I think you asked about the magnitude of legal costs, and there were a variety of other things. I will try and go through what I think you asked.

In a media release on 20 March, the Attorney-General announced that the total legal services expenditure of FMA agencies in 2007-08 was over \$510 million. Since the Attorney-General's announcement one of those agencies has advised the department that it had revised its legal expenditure figure down. Accordingly, the total reported legal expenditure of FMA agencies in 2007-08 was \$507.3 million. Fifty-seven per cent of the increase between the expenditure in 2006-07 and 2007-08 was due to the Australian Securities and Investment Commission coming under the FMA Act and therefore being required under the Legal Services Directions to report its legal expenditure.

Senator Barnett asked what, apart from the inclusion of new agencies, were the reasons for this increase. Explanations from agencies showing significant increases include machinery of government changes resulting in an increase in functions, significant litigation such as that related to the Northern Territory intervention, the equine influenza inquiry, large projects such

as the National Broadband Network and the takeover of the Mersey Hospital, increases in regulatory activity by agencies such as the Office of the Workplace Ombudsman and the ACCC and improved data collection by agencies. On 20 March the Attorney announced a review of the procurement of legal services following this significant increase. The review will look at the existing arrangement for the procurement of legal services and provide advice on how the Commonwealth can most effectively purchase legal services to deliver value for money to taxpayers.

Senator Barnett asked what proportion of the total spend for 2007-08 was external. Only 74 of the 99 agencies provided a breakdown of external expenditure. This showed a total of \$310.9 million, or 61.3 per cent, being external expenditure. On 1 July 2008 the Attorney-General amended the Legal Services Directions to mandate the use of standard template for agencies when reporting on their legal services expenditure. The new template requires all agencies to provide, among other things, a breakdown of their external and internal legal spend. So the new template will be used for reporting from 2008-09.

Senator Barnett also asked what is the usual process for deciding who will provide legal advice to the Commonwealth. Many agencies have established panels of legal service providers from which they can procure legal services. Agencies without their own panel can procure services in any way consistent with the Commonwealth Procurement Guidelines. Agencies may also source services from their in-house legal units, if they have them. On 17 September 2008 the Attorney-General mandated the use of standard form request for tender documentation for agencies to use when setting up legal services panels. There is a press release from the Attorney that I can certainly make available to you. We also have the terms of reference for the legal services inquiry, which I am happy to make available as well. I think that answers your questions, Senator.

Senator BARNETT—It answers some of them, but thank you very much for that. It is most appreciated. I will certainly be following up on the points that you have made. I did also ask about the hospitality expenses.

Mr Wilkins—Yes, I am coming to that. I have a schedule which I am happy to table. It shows, on the three occasions that you nominated, the minister having dinner with the New Zealand minister for customs and with the Indonesian Minister of Law and Human Rights and the Attorney-General having dinner with his senior executive. I have that information here and am happy to put that on the record. You asked about the process for payment of ministerial hospitality. It has been around for a long time; the previous government would have used it. The standard process for payment of ministerial hospitality is through a receipt of invoice and a claim for payment from the relevant minister or his/her authorised person. In a majority of cases an invoice from the caterer and/or the venue is provided to the Attorney-General's Department along with a claim for payment signed by the relevant ministerial personal staff. This invoice is paid for by AGD using standard payment methods. Where payment is required at the time of event, ministers may make their own arrangements, such as using a credit card for payment, and seek reimbursement from AGD using a claim for payment. That would obviously need to include the proper invoice and evidence of payment, and payment would be made in the normal way. I am happy to table the schedule.

Senator BARNETT—All right. Did that occur in those three cases?

Mr Wilkins—I assume that is right.

Senator BARNETT—And in the three cases I referred to you have indicated who attended and the identity—

Mr Wilkins—Yes, it is listed there in that schedule.

Senator BARNETT—For which I thank you. If I have further follow-up questions, we will deal with them—

Mr Wilkins—You had some other questions, I think. Do you want to deal with those as well?

Senator BARNETT—Yes, if we could.

Mr Wilkins—That material is just being typed up; we will have it in a moment.

CHAIR—Let's move on, shall we, while we are waiting for that. Mr Lawler and Ms Bailey, thank you for your attendance this evening.

[10.20 pm]

Australian Institute of Criminology and Criminology Research Council

CHAIR—I welcome the witnesses. Mr Marks, you are still the acting director of the institute—is that correct?

Mr Marks—Yes, that is right.

CHAIR—Do you have an opening statement for us?

Mr Marks—No, but we would welcome your questions.

Senator FISHER—I have three or four questions arising out of your portfolio budget statement. Firstly, regarding your expenses and your income, I refer you to page 232, which lists, at table 3.2.3, your estimated actual expenses for 2008-09 at some \$10.44 million. The previous budget statements projected those expenses would be \$9.075 million, so the difference is about 15 per cent. Can you explain the increase?

Mr Marks—Yes, there are a couple of reasons for that. What has been typical for the institute of criminology over the past few years has been self generated income of approximately \$2 million a year. When the first round of budget statements are prepared, often the contracts are not in place for that work and it comes in during the year—closer to the commencement of the financial year and then during the financial year. So, typically, as we get closer to the estimated actual, we have increased revenues and increased expenses to represent that self generated or contract research work that we undertake for other agencies.

Senator FISHER—You offer that sort of explanation in relation to the externally generated revenue on page 229 of the budget statements. Is it a similar sort of reason for what is described as 'our own source income' from the sale of goods and rendering of services in 2009-10 which is estimated to be around a third of that for 2008-09?

Mr Marks—Yes, it is the same reason. The revenue increases are matched by increases in expenditure for that contract work that we undertake.

Senator FISHER—The variation in terms of the income is two-thirds. In the scheme of things, it may not be big bickies but in terms of a percentage variation compared with the figures for your organisation it is nonetheless quite significant.

Mr Marks—Yes, that is correct. As I said, what has been typical over the past couple of years is that additional work worth \$2 million has been carried out by the institute compared to a base appropriation of around \$7 million. So it is a substantial amount of self generated income compared to that base appropriation. At the time of preparing budget estimates, if the contracts are not in place for that additional work, we take a conservative approach and do not actually budget for that work or the expenditure which would match it until the work arises.

Senator FISHER—Understood. If I could take you to page 233, table 3.2.2. I have a couple of questions about the liability provisions categorised as ‘other’. What expenses make up that? The reason I ask is that that category was not in the 2008-09 budget statements but it appears this time around. Perhaps it is explained by how it is comprised.

Mr Marks—Can I take on notice the detailed break up of that change from the previous budget statements to this presentation?

Senator FISHER—Yes—what comprises ‘other’ and why this time and not last time?

Mr Marks—Yes.

Senator FISHER—Thank you. I have another question about the category ‘other’, but this time in respect of the payables in the same table. The 2008-09 budget statements suggested that those expenses would be nil by 2010-11, but this time around you are suggesting they will be ongoing. I wonder why that is?

Mr Marks—Again, if I could take that on notice.

Senator FISHER—Thank you. I now refer you to cash received on page 234 of the budget statement. Cash received through goods and services in 2009-10 will be some 12 per cent of that received in 2008-09. Why is that?

Mr Marks—I will have to take that on notice. I think that is actually aligned with the budgeted revenues that I just spoke of that are understated at this point of time as to previous years.

Senator FISHER—It may well be. I have I guess a similar question except the other way around. Page 167 of the previous budget statements underestimated what now appears to be the 2008-09 cash received from goods and services by more than 50 per cent. So it said it would be some \$2,850,000 and it is now \$1,399,000. That is on table 3.2.3 in 2008-09. So the budget estimate was some \$1,399,000. Sorry, I have put that the wrong way around I think. This years statements suggest they were \$2,850,000. Yes, that is right. I am just wondering whether you can, perhaps on notice, explain the discrepancy.

Mr Marks—Yes, and you are referring to the previous portfolio budget statements?

Senator FISHER—Yes, in terms of the \$1,399,000—and then this time round in terms of the \$2,850,000. My last question is about key performance indicators. On page 230 of this year’s budget statements there is a reference to the quantity of publications, roundtables and conferences as agreed by the minister and also ‘90 per cent of web users report they find the

website up-to-date and useful'. As best I can work it out, they are the same KPIs as for the previous year. That may well be because they were well and good, but do you have a process for reviewing your KPIs? If so, what is that process and has it been undertaken?

Mr Marks—That 90 per cent of web users being satisfied is one of the same KPIs as we have had for at least the last year. We do undertake surveys and other methods of contacting stakeholders to measure against that KPI. In terms of the other outputs—the quantity of documents, publications and so forth being to the level of satisfaction of the minister—in prior years we have actually had a specific number which related to agreements with the previous minister. At this point in time we are sort of tracking towards those, but I have informed the AIC's board and the minister that it would be appropriate for 2009-10 if there is another director appointed to finalise those agreed KPIs with the minister.

Senator FISHER—Thank you, and, perhaps on notice, can you provide what your actual performance outcomes were in 2008-09. I might have missed it but I could not see any indication as to what the actual outcomes were.

Mr Marks—So you mean the outcomes against the KPIs for 2008-09?

Senator FISHER—Yes.

Mr Marks—Yes.

CHAIR—Mr Marks, can you tell me when you were appointed as the acting director?

Mr Marks—It was with effect from 3 May last year.

CHAIR—So that was 3 May 2008?

Mr Marks—Yes.

CHAIR—Have you recently been reappointed as the acting director?

Mr Marks—Yes, over the course of what is now a week shy of 13 months there have been several instruments of appointment of acting director.

CHAIR—So has the position of director been advertised?

Mr Marks—I am aware that it has. But that is not something that is the responsibility of the institute; it is a matter for the minister and the department has carriage of that process.

CHAIR—Mr Wilkins, are you able to answer that question?

Mr Wilkins—I will ask Mr Jordana to answer that question.

Mr Jordana—Yes, the position has been advertised. In fact, it was advertised twice. There was a process—obviously there is a panel that was constituted; I was chair of the panel. The aim of the panel was to identify and to pass recommendations to government. We had to revisit the first panel process because a preferred candidate pulled out. We had to readvertise—the panel thought that was necessary—and current recommendations are with the government.

CHAIR—So you have interviewed and have recommended a new director with the government. So, Mr Marks, how many times as your reappointment occurred? Are these ongoing three-month or six-month contracts?

Mr Marks—There has been a mixture of those intervals that you mentioned.

CHAIR—It is my understanding that the Criminology Research Act is the act that regulates the appointment of the director—is that correct? What act is it?

Senator BARNETT—You are referring to a different act, I think.

CHAIR—What act regulates the appointment of the director?

Mr Jordana—The AIC Act.

Ms Kelly—My understanding is that it is the AIC Act.

CHAIR—Does that specify any particular laws governing the appointment of the director such that an acting director cannot be there for a period of longer than 12 months?

Ms Kelly—I do not have the act in front of me, but I am happy to take that question on notice and come back to you with those details.

CHAIR—If you would not mind. I am interested to know whether the reappointment of an acting director actually contravenes the provisions in the act. Mr Marks, can you tell me what is happening with the negotiations for your current enterprise agreement.

Mr Marks—Is there something in particular that—

CHAIR—Just tell me what stage they are at.

Mr Marks—The institute instigated discussions with staff with a view to a new certified agreement in February. The existing certified agreement expires late in August 2009 and followed up with in accordance with the current legislative requirements and government policy inviting staff to nominate eligible staff, whether they were wanting to be party to a union collective agreement or an employee collective agreement. Staff nominated to be covered by a union collective agreement. An invitation was sent to the CPSU informing them of this and inviting them to indeed represent the staff. An initial meeting was held with the CPSU to discuss the protocols and the preferred way forward. Management set out a preferred time frame to have a new agreement in place, preferably by June this year and—

CHAIR—Are you saying that it is management's preferred position to have an agreement in place by 30 June this year?

Mr Marks—Yes, that is correct.

CHAIR—But not necessarily the employee's preferred position—is that right?

Mr Marks—I cannot speak for the employees.

CHAIR—Are you not seeking advice about how to handle this under the current legislative regime post 1 July?

Mr Marks—Yes, we are indeed seeking that advice now. I will go back to where I was at the chronology of the process. Following an initial protocol meeting, it was understood, at least by the management representative teams, that agreement had been reached about the process and time frame and representation on the negotiating committee.

CHAIR—Who was that agreement reached with?

Mr Marks—With the CPSU representative, one staff member who was at the meeting at the invitation of the CPSU, an adviser to the institute, my senior finance officer and me. One of the items identified is that I, as acting director, would not participate in the further negotiation meetings. A letter summarising the perceived protocol agreements was sent to CPSU inviting a date for a further meeting to get the actual claim negotiations underway. At that meeting, the CPSU arrived with more staff representatives than what had been understood to be agreed. The management representatives at that meeting therefore said that a fundamental aspect of what had been agreed at the prior meeting not having been met—

CHAIR—What was that? Two a side or three a side or something?

Mr Marks—What actually had been put was that the CPSU would have two staff members. In fact, management also encouraged that there be up to another two staff members at the meeting. In all, that made two staff representatives at the negotiating table in addition to the CPSU plus another two CPSU nominated staff representatives and just two representatives of management. But the CPSU then arrived with three plus the CPSU member plus the other two staff members.

CHAIR—So have you suspended discussions about this agreement?

Mr Marks—No, as a result of that meeting, I wrote to the CPSU saying that we had, as I understood it, reached agreement that I was disappointed that on such a fundamental and basic issue at the outset, as I understood it, the CPSU had not gone through with what had been agreed and we therefore needed to get together again to establish what the ground rules would be. It took six weeks for the CPSU to respond to that letter, bringing us to a point in time where, I am advised, it will now be impossible to reach a negotiation and have it lodged with the relevant authorities and signed off under the current legislation. As a result of that, I have written to the CPSU noting that, given that there is the impending change of legislation to apply from 1 July with transitional provisions and other things that are not yet fully released or understood, I would now have to take advice on a couple of matters before we could sit back down at the table. Those matters are around things like whether it is union agreement, employee agreement, a general agreement representation.

CHAIR—What was the urgency about having an agreement before 30 June?

Mr Marks—There was no particular urgency other than a desire by me to not have a long and protracted negotiation which would be disruptive to staff. It was also because we understood the laws as they stood at that time and it was unclear what was going to be the case to apply from 1 July precisely, and with an August closing time frame we would effectively be straddling that period of uncertainty.

CHAIR—But that is quite clear now, isn't it, now that that legislation has passed the parliament and the transitional bill is now available?

Mr Marks—Yes it is, and I am now just taking advice on that before I sit down at the table again with the CPSU.

CHAIR—When are you planning to next meet to progress this?

Mr Marks—I have written very recently to the CPSU to make the point that I cannot meet again until I take advice on whether there is an impact on our current proposed structure of

negotiation given the relatively new transitional provisions. I am proposing to seek advice from the Department of Employment and Workplace Relations.

CHAIR—Mr Jordana, how soon do you think it will be before you have a director in place?

Mr Jordana—I cannot give a precise time. That is in the hands of the government. I would imagine it will be relatively soon.

CHAIR—Would you be able to get back to me tomorrow morning with the advice about the appointment for the acting director, whether or not it is lawful to reappoint an acting director for more than 12 months under the legislation.

Ms Kelly—We will have those details for you in the morning.

CHAIR—Thank you very much.

Senator BARNETT—I will put a question on notice to Mr Marks in light of the time. I know that Senator Fielding has some questions on CrimTrac and I was going to interpose, Chair, and suggest that, if at all possible, we could bring CrimTrac on now to allow Senator Fielding to get his questions up.

Senator FISHER—Mr Marks, the strategic plan for the Criminology Research Council on the Web was formulated in 2004-05. Has the council got a new plan that I have missed?

Mr Marks—I will take that on notice. Certainly, the council has had forums and so forth to take on its strategic priorities. I cannot be certain whether the plan has not made its way to the Web or whether it has not been finalised in a more current form.

Senator FISHER—It is looking a bit old if there is not a new one. That strategic plan refers, firstly, to having one CRC meeting each year to set priorities for the forthcoming year and, secondly, to having a strategy meeting every second year to formulate strategies. Have those meetings happened? When was the most recent of each of them? What were the outcomes of each? I will put those questions on notice.

CHAIR—I know that the time is ticking, but I have not asked any questions in the last two days. My research is right. This institute is actually covered by the Criminology Research Act 1971. Clause 22 of that act does actually place a restriction on an acting director stating they:

... shall not continue to act for more than 12 months.

So can you explain to me why, after a 12-month period, the same person was reappointed as opposed to somebody else? How did it come about that you have breached the act?

Ms E Kelly—My understanding is that there has not been a continuous period in excess of 12 months that there was a break in the appointment for a period of days. I will have all of those details for you in the morning.

CHAIR—It does not say that. Section 22(1)(b) actually says:

during any period, or during all periods, when the Director is absent from duty ...

So the act does take account of short-term and long-term contracts and breaks in days and absences. It talks about no more than 12 months. Would you provide me tomorrow morning

with a reason as to why you have breached the act with regard to the appointment of the director at this institute.

Mr Wilkins—We will provide advice on that to you tomorrow morning.

CHAIR—We will be finishing with the Attorney-General's Department at 12.30 tomorrow. The committee has been lenient in giving A-G's two and a half days. We should actually be moving on to Immigration at 9 am tomorrow, but we will deal with Immigration at 1.30 tomorrow afternoon. As far as I know, we will have the Government Solicitor, the High Court of Australia, the Insolvency and Trustee Service, DPP and outcomes 1, 2 and 3 between nine o'clock and 12.30. I just want to make sure that you are all very clear about that.

Senator BARNETT—And we have nine minutes for CrimTrac.

[10.51 pm]

CrimTrac Agency

CHAIR—Good evening and welcome, Mr Storer. Do you have an opening statement?

Mr Storer—No.

CHAIR—We will go to questions.

Senator FIELDING—I want to focus on the national criminal history record checking. Because of the lateness of the hour is going to be pretty tight. Roughly how many criminal history checks do you do each year?

Mr Storer—Last year we did approximately 2.6 million.

Senator FIELDING—What is generally the reason they are carried out? Do you have a feel for why they are done?

Mr Storer—It is for a variety of reasons. People undertake a criminal history check under informed consent prior to gaining employment in a number of organisations. These are positions of trust such as working with the elderly or children—positions of significant concern—so organisations undertake to make sure that people they are gainfully employing do not have an inappropriate criminal history.

Senator FIELDING—I have noticed that the number of checks have been going up quite substantially over the last couple of years.

Mr Storer—That is correct, yes.

Senator FIELDING—People rely on them pretty seriously, don't they? As you say, people are employed to work with vulnerable people and those sorts of things.

Mr Storer—Yes, they use criminal history checking as part of their selection process, and it is part of a range of information that they have available to them to make sure they are employing appropriate people in appropriate positions.

Senator FIELDING—Are you aware that a criminal can hide their history by changing their name by deed poll? When you do a search on their new name, and you have no knowledge that they have changed their name, does it pull up their criminal history from their old name?

Mr Storer—It is important to note that the vast majority of criminal history checking that we do is name based checking. It is our understanding that an individual may change their name and it is also our understanding that the relevant jurisdiction's births, deaths and marriages registry may not transfer that information to their relevant police jurisdiction.

Senator FIELDING—Out of the 2.6 million criminal history checks, do you know how many of those people have been cleared of having any criminal history but because they have changed their name by deed poll they have come back as clean and their history has basically gone? If you employ someone working with vulnerable people and expect they have no criminal history, you may get someone who has basically been given the tick through the criminal history checking system. How many of the 2.6 million have changed their names?

Mr Storer—As I said, the checks that we do are name based, so we do the check based on the name that is provided to us. We would have no knowledge or evidence of them having a previous name. So the answer your question is we do not know.

Senator FIELDING—The problem does not exist with your databases, because you only have information that is given to you by the jurisdictions in each state and territory. Is that correct?

Mr Storer—That is correct. We do the criminal history check based on the name provided to us and we run that against the databases of each of the jurisdictions.

Senator FIELDING—Obviously you are aware of the situation that the Birth, Deaths and Marriages in each state and territory do not notify the police authorities in each state of a change in name and that therefore there is no link provided to you in your database. So a federal parliamentarian checking their staff or someone employing staff in an aged-care home cannot know whether the person they are employing has a criminal history if that person happens to have changed their name by deed poll. Isn't that correct?

Mr Storer—Again, our understanding is that we are not aware of whether that transformation from the Births, Deaths and Marriages takes place to the jurisdictions. It may, but our understanding is that we are unsure.

Mr Jordana—The issue you raise is as an important one. The treatment of name and change of name is an issue which is being discussed in an identity security forum. Of course, the responsibility for this rests with the states and territories, quite appropriately. The change of name issue, the recording of names and the kinds of linkages you are talking about are a discussion that is taking place. I would not want to suggest to you that a silver bullet is just around the corner. It has been suggested in some quarters, for example, that one way to eliminate the name problem is to have identity, the recording of convictions and so forth based around fingerprints. Of course, in our community that would be a controversial type of measure.

Senator FIELDING—Isn't it as simple as each state Births, Deaths and Marriages passing the name change across to each state authority? Then it would automatically go into your system. Wouldn't that stop it? This is embarrassing, to say the least. I do not know how long you folks have known about this. It is embarrassing to think that, at federal and state level, we cannot get attorneys-general even to try to put pressure on this issue. To think that we can get a criminal history check done in Australia but that a criminal can hide their history is a joke.

Mr Wilkins—That will not work, because people do not use the names. If I use an alias for some reason I do not go and register it with Births, Deaths and Marriages. The only people you would pick up are the people who lawfully go and change their names by deed poll. The problem confronting the police is that people invent names and change their names without registering, such that the BDM registers are very inaccurate reflections of what people are actually calling themselves in the community.

Senator FIELDING—It sounds to me like you are camouflaging with another issue why we would not pass a piece of information across. I understand that there is an issue there as well, but why wouldn't you be fighting tooth and nail with the federal-state relationships, COAG or whoever? I hear you say you are working on it, but this is so simple it is not funny.

Mr Wilkins—It is not simple. It will not solve your problem. The type of information contained in the BDM register will not do what you want it to do.

Senator FIELDING—It will change it for those who change their name by deed poll because they are aware of this situation. To have a false name going forward is a different issue that can be tracked a different way.

Mr Wilkins—If you look at the future of identity, most people look at this problem and say you have to go to biometrics. The problem is that politically that is too sensitive, and governments have not been able to get to biometrics. When somebody gets divorced, for example, they do not change their name. If somebody uses an alias, that does not go on the BDM. Even if somebody gets married they do not necessarily put their new name on the register. If somebody comes from overseas they do not necessarily go in that register either.

CHAIR—We have got to 11 o'clock. Senator Fielding, do you need CrimTrac to come back in the morning?

Senator FIELDING—I may have to place my questions on notice. I am unlikely to be here tomorrow.

CHAIR—Senator Barnett, do you need people back?

Senator BARNETT—Yes, for 15 minutes or thereabouts.

CHAIR—Thank you very much.

Committee adjourned at 11.01 pm